

*United States Court of Appeals
for the Second Circuit*



APPENDIX

75-7341

**United States Court of Appeals
FOR THE SECOND CIRCUIT**

ARISTEDES A. DAY, THEODORA DAY and CONSTANTINE DAY, individually and ARISTEDES A. DAY and THEODORA DAY parents of CONSTANTINE DAY,

Plaintiffs-Appellees,

against

TRANS WORLD AIRLINES, INC.

Defendant-Appellant.

KATE KERSEN, individually and as Administratrix and Administratrix Ad Prosequendum of the Estate of Elbert Kersen, deceased,

Plaintiff-Appellee,

against

TRANS WORLD AIRLINES, INC.

Defendant-Appellant.

JOHN SPIRIDAKIS, BESSIE SPIRIDAKIS, LEONARD LAZARUS, SHIRLEY LAZARUS, ARNOLD ROSE and HELEN ROSE,

Plaintiffs-Appellees,

against

TRANS WORLD AIRLINES, INC.

Defendant-Appellant.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK

APPENDIX

CHADBOURNE, PARKE, WHITESIDE & WOLFF

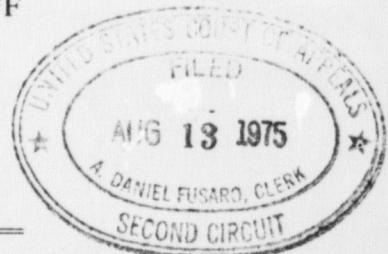
Attorneys for Defendant-Appellant

Trans World Airlines, Inc.

30 Rockefeller Plaza

New York, New York 10020

Continued on next page



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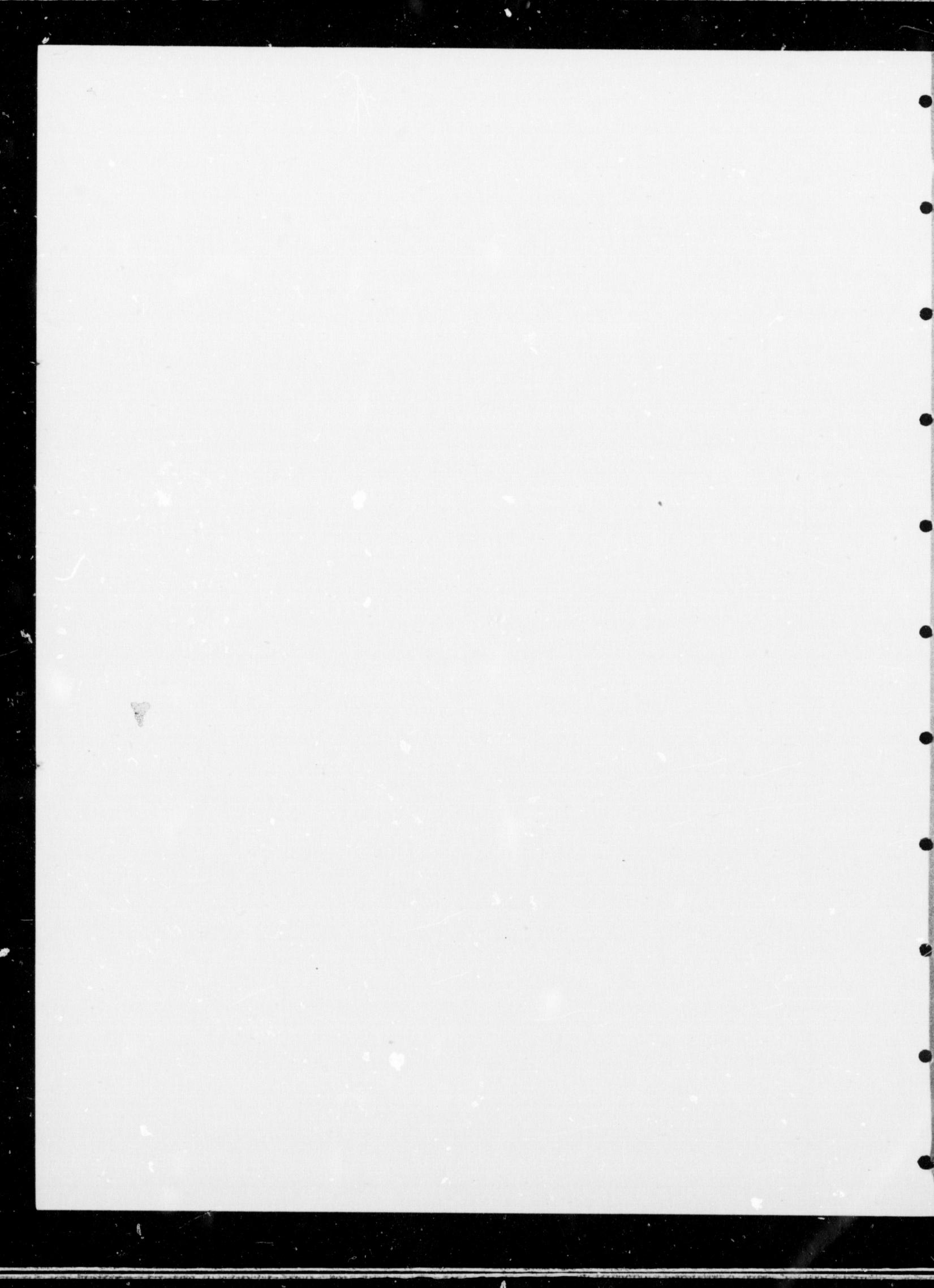


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DOCKET ENTRIES

FEB 21 1975

CIVIL DOCKET
UNITED STATES DISTRICT COURT

JUDGE BRIEANT

Jury demand date:

TITLE OF CASE

ATTORNEYS

ARISTEDES A. DAY, THEODORA DAY,
 & CONSTANTINE DAY, individually,
 ARISTEDES A. DAY & THEODORA
 DAY, as parents of CONSTANTINE
 DAY

For plaintiff:

Turk-Marah-Kelby & Hoare-
 666-Fifth-Ave.-NYC-10019--745-5900

Rosenzweig & Hills (2-14-74)
 90 Park Ave., NYC - 10016 - 953-9200

vs

TRANS WORLD AIRLINES, INC.

For defendant:

Chadbourn Parke Whiteside & Wolff
 25-Broadway, NYC-10001-34-8900-
 30 Rockefeller Plaza, NYC 10020 - 511-5800

STATISTICAL RECORD	COSTS	DATE	NAME OR RECEIPT NO	REC.	DISH.
5 mailed X	Clerk	1/25/75	J. L. K.	11	
		2/27/75	S.T. --		11
6 mailed	Mar				
asis of Action: ersonal Injuries, etc.	Docket fee				
	Witness fees				
tion arose at:	Depositions				

Docket Entries

73 Civ. 4105 ARISTEDES A. DAY, ET AL -v-
TRANS WORLD AIRLINES, INC.

DATE	PROCEDURES	Date O Judge
5-26-73	Filed complaint and issued summons.	
5-26-73	Filed 1st amended complaint	
5-26-73	Filed summons & return. Served Mr. Cummins, 9-26-73.	
5-27-73	Filed pltffs' interrog. Nos. 1 thru 14	
5-27-73	Filed deft's ANSWER to 1st amended complaint	
5-29-73	Filed pltffs' 1st request for admissions.	
5-29-73	ASSIGNED TO JUDGE BRIEANT	
6-10-73	Filed deft's response to 1st request for admissions	
6-13-73	Filed notice of change of firm address	
6-13-73	Filed affidavit. stip. to agree substituting attys. for pltffs--Brieant, J.	
6-15-73	Filed deft's answers to pltffs' interrog. Nos. 1-14	
6-15-73	<u>Plaintiff's Cross Motion Filed</u>	
Nov 1-74	Filed Pltff's Affdvt's and Notice of Motion for Summary Judgment.	
Nov 1-74	Filed Pltff's Memorandum in Support of Motion for Summary Judgment.	
Nov 12-74	Filed Order & Stip. that pltffs' motion of summary judgment be adj. to 12-3-74....Brieant, J.	
Dec 2-74	Filed pltff's Affdvt in opposition to Deft's Cross-Motion for Summary Judgment.	
Dec 2-74	Filed Order & Stip that the pltffs' motions for summary judgment is adj. to 12-17-74 at 9:45AM.	
Dec 5-74	Filed Deft's Notice of Cross-Motion for Summary Judgment - ret, 12-17-74 - and Affdvt in Support of Deft's motion and in opposition to Pltff's motion.	
4-1-75	Filed Memorandum Decision 42131....pltffs' motion for summ. judg. on the issue of liability is granted; deft's motion for summ. judg. dismissing the claim is denied.....If requested by the deft. to do so, the Court will stay all further proceedings in these cases and certify the question for purposes of an interlocu- tory appeal under 28 U.S.C. 1292...Counsel for any party, if so advised, may sub- mit a proposed statement of the question to be certified pur. to Rule 5 FR App. P., which may be set forth in the order determining the motion...Settle a single order w/ 3 copies on 5 days notice,Brieant, J.	
4-8-75	Filed Memo of Law in support of TWA's Cross Motion for summ. Judg. etc.	
4-17-75	Filed Order that the motions of pltff for partial summary judgment on the issue of Liability are granted, and the motions of deft. for partial summ. judg. on the issue of liability are denied; and that an assessment of damages not to exceed \$75,000 per passenger be had; and that all further proceedings in these cases be stayed pending a timely filing of a petition for permission to appeal to US CA for the 2nd Cir. and the final determination of all appeals; and that an interlocu- tory appeal is hereby certified pur. to 28 U.S. Code Se. 1292 with respect to the following question:Whether under the facts of this case the substantive rights of the parties are governed by the Warsaw Convention and the Montreal Agree- ment....Brieant, J. mn	
6-30-75	Filed Notice to Docket Ck that the record has been certified and transmitted to USCA on 6-30-75.	

Docket Entries

CIVIL DOCKET
UNITED STATES DISTRICT COURT

3 C. Reg. No. 106 Ray

TITLE OF CASE

APPENDIX

KATE KERSEN, individually and as
Administratrix and Administratrix
Ad Prosequendum of the Estate of
ELBERT KERSEN, deceased.

Kreindler & Kreindler, 99 Park Ave.,
N.Y.C. 10016 687-8181

vs.

TRANS WORLD AIRLINES, INC.

For Plaintiff:

Kreindler & Kreindler, 99 Park Ave.,
N.Y.C. 10016 687-8181

For defendant:

Chadbourne, Parke, Whiteside & Wolff,
30 Rockefeller Plaza, N.Y.C. 10020
541-1000

STATISTICAL RECORD	COSTS	DATE	NAME OR RECEIPT BY	REC.	DISB.
J.S. 5 mailed <input checked="" type="checkbox"/>	Clerk		<i>Hawper</i>		
J.S. 6 mailed	Marshal				
Basis of Action: Personal injury- Aircraft death.	Docket fee				
	Witness fees				
Action arose at:	Depositions				

Docket Entries

74 CIV 3395 KATE KESEN, etc. vs. TRANS WORLD AIRLINES, INC.

74 CIV 3355

JUDGE BRIEANT

DATE	PROCEEDINGS	Date Order Judgment No.
2-14	Filed certified copy of docket entries only, transferred from USDC Eastern Dist of N.Y., together with copies of documents from attorneys from both parties.	
	PROCEEDINGS - SDNY	
2-74	Filed Plaintiff's Notice of Motion for Partial Summary Judgment & Supporting Papers.	
2-74	Filed Plaintiff's Memorandum of Law in support of motion for summary judgment.	
2-74	Filed Plaintiff's Reply Memo of Law in support of Plaintiff's motion for summary judgment.	
1-175	Filed Memorandum Decision #2112... Plaintiff's motion for summ. judg. on the issue of liability is granted; defendant's motion for summ. judg. dismissed; the claim is denied... If requested by the defendant to do so, the Court will stay all further proceedings in these cases and certify the question for purposes of an interlocutory appeal under 28 USC 1292... Counsel for any party, if so advised, may submit a proposed statement of the question to be certified pur to Rule 5 FR App P., which may be set forth in the order determining the motion... Settle _____ a single order with 3 copies on 5 days notice.... Brieant, J. A.	
4-8-75	Filed Defendant's Motion for summ. Judg.	
4-8-75	Filed TWA's Memo of aw. in support of its cross motion for summ. judg. etc.	
4-17-75	Filed Order that an assessment of damages not to exceed \$75,000 per passenger be had; and that all further proceedings in these cases be stayed pending a timely filing of a petition for permission to appeal to US Ca for the 2nd Cir. and the final determination of all appeals; and that an interlocutory appeal is hereby certified pur. to 28 U.S. Code Sec. 1292 with respect to the following questions:Whether under the facts of this case the substantive rights of the parties are governed by the Warsaw Convention and the Montreal Agreement... Brieant, J. mm	
6-30-75	Filed Notice to Docket Clerk that the record has been certified and transmitted to USCA on 6-30-75.	

A 5

Docket Entries

CIVIL DOCKET
UNITED STATES DISTRICT COURT

Jury demand date:

Pltff. 9-24-74

D. C. Form No. 104 Rev.

TITLE OF CASE

ATTORNEYS

JOHN SPIRIDAKIS,
BESSIE SPIRIDAKIS,
LEONARD LAZARUS,
SHIRLEY "LAZARUS",
ARNOLD ROSE and
HELEN ROSE

For plaintiff:
Brown Hurwitz Seidman Ehrlich & Zasky
445 Park Ave., NYC, 10022 832-0120

vs.

TRANSWORLD AIRLINES, INC.

For defendant:
CHADBOURNE, PARKE, WHITESIDE & WOLFF
30 Rockefeller Plaza, NYC 10020
541-5800--

STATISTICAL RECORD	COSTS	DATE	NAME OR RECEIPT NO.	REC.	DISB.
J.S. 5 mailed x	Clerk	1/24/74	John H. 15	15	
J.S. 6 mailed	Marshal	1/24/74	451-451-15	15	
Basis of Action: Personal injuries due to negligence, \$1,000,000.00	Docket fee Witness fees				
Action arose at:	Depositions				

Docket Entries

74 CIV L191 JOHN SP IRIDAKIS, et al VS. TRANSWORLD AIRLINES, INC.

JUDGE BRIEANT

DATE	PROCEEDINGS	Date On Judgment
		CPW&W
7-1-74	Filed complaint & issued summons.	
7-1-74	Filed summons & Marshall's return. Served: Transworld Airlines By: U.V. Hoffman 9-20-74	
7-1-74	Filed Deft's ANSWER.	
7-1-74	Filed Pltffs' interrogs. to deft.	
7-1-74	Filed Stip. & Order that Pltffs hereby move for summary judg. and oppose defts' motion for summary judg. on the papers and memo. filed in 73 Civ 4105 & 74 C 3355; Deft. hereby moves for summary judgment and opposes pltffs' motion for a summary judgment on the papers and memo. filed and submitted to Court in the two aforementioned actions;.....Brieant,J.	
7-22-74	Filed Stip.& Order that the deft. Trans World Airlines time to answer the pltffs' interrogs. is extended to the 30th day following the order of this Court with respect to the motion & cross-motion for summary judgment made in 73 C 4105 & 74 C 3355....Brieant,J.	
8-1-74	Filed Memorandum Decision # 4212....Pltffs' motion for summary judg. on the issue of liability is granted; deft's motion for summ. judg. dismissing the claim is denied....If requested by the deft. to do so, the Court will stay all further proceedings in these cases and certify the question for purposes of an interlocutory appeal under 28 USC 1292....Counsel for any party , is so advised, may file a proposed statement of the question to be certified pur. to Rule 5 F R App. P. which may be set forth in the order determining the motion..Settle a single order with 3 copies on 5 days notice....Brieant,J. nn	
8-17-74	Filed Order that an assessment of damages not to exceed \$75,000 per passenger be had; and that all further proceedings in these cases be stayed pending a timely filing of a petition for permission to appeal to US CA for the 2con Cir. and the final determination of all appeals; and that an interlocutory appeal is hereby certified pur. to 28 U.S. Code Sec. 1292 with respect to the following questions...Whether under the facts of this case the substantive rights of the parties are governed by the Warsaw Convention and the Montreal Agreement....Brieant,J. nn	
6-30-75	Filed Notice of to Docket Ck that the record has been certified and transmitted to USCA on 6-30-75.	

FIRST AMENDED COMPLAINT OF PLAINTIFFS DAY

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF NEW YORK

-----x

ARISTEDES A. DAY, THEODORA DAY, :
and CONSTANTINE DAY, individually, :
and ARISTEDES A. DAY and THEODORA : FIRST AMENDED COMPLAINT
DAY, as parents of CONSTANTINE :
DAY, : Index No. 73 Civ. 4105

Plaintiffs, : Judge MacMahon

-against- :
-----x

TRANS WORLD AIRLINES, INC., :
-----x

Defendant. :
-----x

Plaintiffs, complaining of the defendant, by TURK,
MARSH, KELLY & HOARE, their attorneys, allege:

AS AND FOR A FIRST CAUSE OF ACTION

1. This action arises under the Warsaw Convention
For The Unification of Certain Rules Relating to International
Transportation by Air, to which the United States declared its
adherence on July 31, 1934 (49 Stat. 3000), as hereinafter more
fully appears. The matter in controversy exceeds, exclusive
of interest and cost, the sum of \$10,000.00.

2. Upon information and belief, defendant is an
adherent to the Warsaw Convention and a signatory to the
Montreal Agreement which impose upon said defendant absolute
liability for injuries and damages sustained by a passenger
on board its international aircraft or in the course of any
of the operations of embarking or disembarking.

First Amended Complaint of Plaintiffs Day

3. Defendant, for hire and compensation exacted and paid, undertook and agreed to transport, by air, said Aristedes A. Day and Constantine Day, and certain of their personal effects and baggage from New York, New York, to Athens, Greece, to New York, New York, said return trip to New York being scheduled for August 5, 1973.

4. On said August 5, 1973 in Athens, Greece, said Aristedes A. Day and Constantine Day did commence to embark upon an aircraft owned and/or operated by the defendant herein for the purpose of returning to New York City from Athens, Greece.

5. Upon information and belief, international air carriers, including the defendant herein, know of, have been subjected to, and have been the targets of, numerous attacks by terrorists, said attacks resulting in death and/or personal injuries to various air passengers and substantial property damage.

6. At all times relevant herein, it was the duty of the defendant herein to exercise reasonable and due care to ascertain and make certain that persons entering the area or approaches to the area reserved for passengers preparing to embark upon its aircraft were not in possession of volatile and/or dangerous weapons.

7. With full awareness of the inherent danger complained of, the defendant at all times relevant herein, was negligent in that it failed to exercise reasonable diligence and due care in protecting its passengers from said

First Amended Complaint of Plaintiffs Day

terrorist attacks in that its negligence permitted armed terrorists to gain access to said restricted area reserved for passengers preparing to embark upon said defendant's aircraft.

8. As a result of the defendant's failure to exercise due care and diligence at the time complained of herein, certain terrorists did gain entrance into the area under the exclusive control of the defendant herein and reserved for passenger embarkation to the aircraft, where said individuals detonated explosives resulting in severe personal injuries to said Aristedes A. Day and Constantine Day, which injuries are believed to be permanent.

9. The negligence of the defendant complained of herein was so gross that it amounted to willful misconduct on the part of said defendant in that it knew or should have known that its failure to provide adequate and necessary security for its passengers could and would result in personal injuries and/or death to its passengers.

10. As a result of the aforesaid negligence of the defendant, said Aristedes A. Day and Constantine Day have incurred and will continue to incur substantial medical expenses.

11. As a result of the aforesaid negligence of the defendant, said Aristedes A. Day and Constantine Day have suffered the loss and/or will continue to, or will suffer the loss of wages.

12. As a result of the aforesaid negligence of the

First Amended Complaint of Plaintiffs Day

defendant, said Aristedes A. Day and Constantine Day have suffered and continue to suffer extreme shock and emotional distress.

WHEREFORE, plaintiffs Aristedes A. Day and Constantine Day each demand judgment against defendant in the sum of \$2,000,000.00, together with costs and attorneys' fees.

AS AND FOR A SECOND CAUSE OF ACTION

13. Plaintiffs adopt and by reference incorporate herein all of the allegations in Paragraphs 3 through 12, both inclusive, of the first cause of action herein.

14. Plaintiffs are citizens of the State of Connecticut and defendant is a corporation incorporated under the laws of the State of Delaware, having its principal place of business in a State other than the State of Connecticut. The matter in controversy exceeds, exclusive of interest and costs, the sum of \$10,000.00.

15. All plaintiffs herein are over the age of twenty-one (21) years and are of sound mind, except plaintiff Constantine Day, who is an infant over the age of fourteen (14) years. Plaintiffs Aristedes A. Day and Theodora Day are the parents of said Constantine Day.

16. Upon information and belief, defendant is and for many years has been a common carrier of passengers and baggage by air for hire.

WHEREFORE, plaintiffs Aristedes A. Day and Constantine Day each demand judgment against defendant in

First Amended Complaint of Plaintiffs Day

the sum of \$2,000,000.00, together with costs and attorneys' fees.

AS AND FOR A THIRD CAUSE OF ACTION

17. Plaintiffs adopt and by reference incorporate herein all of the allegations in Paragraphs 3 through 12, and 14 through 16, inclusive, of the first and second causes of action herein.

18. As a result of the aforesaid negligence of the defendant, plaintiff Theodora Day has suffered, and will continue to suffer, the loss of the full benefit and advantage of the society, comfort, protection and guidance of her husband, Aristedes A. Day, and she has suffered and will continue to suffer extreme mental pain and anguish because of the injuries to her husband in the manner aforesaid.

19. As a result of the aforesaid negligence of the defendant, plaintiff Aristedes A. Day has suffered, and will continue to suffer, the loss of the full benefit and advantage of the society and comfort of his son, Constantine Day, and he has suffered and will continue to suffer extreme mental pain and anguish because of the injuries to his son in the manner aforesaid.

20. As a result of the aforesaid negligence of the defendant, plaintiffs Aristedes A. Day and Theodora Day, as parents, have suffered and will continue to suffer the loss of the benefit and advantage of the society and comfort of their son, Constantine Day, and they have suffered and will continue to suffer extreme mental pain and anguish

First Amended Complaint of Plaintiffs Day

because of the injuries to their son in the manner aforesaid.

21. As a result of the aforesaid negligence of the defendant, plaintiff Constantine Day has suffered, and will continue to suffer, the loss of the full benefit and advantage of the society, comfort, protection and guidance of his father, Aristedes A. Day, and he has suffered and will continue to suffer extreme mental pain and anguish because of the injuries to his father in the manner aforesaid.

WHEREFORE, plaintiffs Aristedes A. Day, Theodora Day and Constantine Day, individually, and Aristedes A. Day and Theodora Day, as parents of Constantine Day, each demand judgment against defendant in the sum of \$1,000,000.00, together with costs and attorneys' fees.

Dated: New York, New York
October 5, 1973.

TURK, MARSH, KELLY & HOARE

By _____

A Member of the Firm
666 Fifth Avenue
New York, New York 10019

Tel. (212) 765-5900

ANSWER TO THE FIRST AMENDED COMPLAINT OF PLAINTIFFS DAY

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

----- x

ARISTEDES A. DAY, THEODORA DAY, :
and CONSTANTINE DAY, individually, :
and ARISTEDES A. DAY and THEODORA :
DAY, as parents of CONSTANTINE :
DAY, : ANSWER TO THE
: FIRST AMENDED
: COMPLAINT

Plaintiffs, : Index No. 73 Civ.
-against- : 4105 (C.L.B., Jr.)

TRANS WORLD AIRLINES, INC. :
Defendant. :
----- x

Defendant, Trans World Airlines, Inc., ("TWA")
by its attorneys, Chadbourne, Parke, Whiteside & Wolff,
answers the first amended complaint (the "complaint") as
follows:

AS TO THE FIRST CAUSE OF ACTION

FIRST: Denies each and every allegation con-
tained in paragraphs "1," "6," "7," "8," "9," "10," "11,"
and "12" of the complaint.

SECOND: Denies each and every allegation con-
tained in paragraph "2" of the complaint except admits
that at all times referred to in the complaint TWA was a
signatory to the Montreal Agreement.

THIRD: Denies that it has knowledge or informa-
tion sufficient to form a belief as to the truth of each

Answer to the First Amended Complaint of Plaintiffs Day

and every allegation contained in paragraphs "3," and "4" of the complaint.

FOURTH: Denies each and every allegation contained in paragraph "5" of the complaint, except admits that at all relevant times TWA was aware that various individuals as well as politically motivated groups had carried out several hijacking attempts, some of which had proved successful, and that instances of passengers sustaining personal injury and or property damage had occurred.

AS TO THE SECOND CAUSE OF ACTION

FIFTH: Repeats and realleges each and every allegation, admission, and denial made to the paragraphs of the complaint which are referred to in paragraph "13" of the complaint.

SIXTH: Denies each and every allegation contained in paragraph "14" of the complaint, except admits that TWA is incorporated under the laws of the State of Delaware and has its principal place of business in a state other than the State of Connecticut.

SEVENTH: Denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph "15" of the complaint.

EIGHTH: Admits the allegations contained in paragraph "16" of the complaint.

Answer to the First Amended Complaint of Plaintiffs Day

AS TO THE THIRD CAUSE OF ACTION

NINTH: Repcats and realleges each and every allegation, admission, and denial made to the paragraphs of the complaint which are referred to in paragraph "17" of the complaint.

TENTH: Denies each and every allegation contained in paragraphs "18," "19," "20," and "21" of the complaint.

WHEREFORE, defendant, TWA, demands judgment dismissing the complaint together with the costs and disbursement of this action.

CHADBOURNE, PARKE, WHITESIDE & WOLFF

By: _____

A Member of the Firm
Attorneys for the Defendant
25 Broadway
New York, New York 10004
(212 344-8900)

COMPLAINT OF PLAINTIFF KERSEN

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

KATE KERSEN, individually and as
Administratrix and Administratrix
Ad Prosequendum of the Estate of
ELBERT KERSEN, deceased,

73C 1489

73 Civ.

Plaintiff,

COMPLAINT

- against -

TRANS WORLD AIRLINES, INC.,

Plaintiff Demands A
Trial By Jury

Defendant.

Plaintiff, by her attorneys, Kreindler & Kreindler,
complaining of the defendant, respectfully alleges:

A FIRST CLAIM FOR RELIEF FOR THE
WRONGFUL DEATH OF ELBERT KERSEN
DECEASED, BASED UPON DEFENDANT'S
WILFUL MISCONDUCT

1. Jurisdiction exists by virtue of 28 U.S. Code §1332,
in that plaintiff Kate Kersen is and plaintiff's decedent Elbert
Kersen was a citizen and resident of the State of New Jersey;
defendant was and still is a corporation duly organized and
existing by virtue of the laws of the State of Delaware with its
principal place of business in New York, New York; and the amount
in controversy exceeds the sum of \$10,000 exclusive of interest
and costs.

2. Prior to the commencement of the within action,
plaintiff Kate Kersen was duly and properly appointed Administratrix
and Administratrix Ad Prosequendum of the Estate of Elbert
Kersen, deceased, and is duly qualified and presently acting in
said capacity.

Complaint of Plaintiff Kersen

3. At all times mentioned, defendant was a common carrier engaged in the business of transporting passengers for hire by aircraft for valuable consideration between various places including New York, New York, and Athens, Greece.

4. Prior to August 5, 1973, plaintiff and plaintiff's decedent purchased tickets which provided for air passage by the defendant from Athens, Greece, to New York, New York, on Defendant's Flight 881 on August 5, 1973.

5. On August 5, 1973, in Athens, Greece, while plaintiff's decedent was in the course of embarking on Flight 881 he sustained personal injuries which resulted in his death.

6. At all times mentioned, the United States of America and Greece were and are High Contracting Parties to the Convention for the Unification of Certain Rules Relating to International Transportation By Air, known as the Warsaw Convention, Treaty Series No. 876, 49 Stat. 3000 et seq.

7. Said injuries and death were caused by the defendant which performed acts of wilful misconduct or such default as is considered to be the equivalent of wilful misconduct.

8. Elbert Kersen was and is survived by his wife, plaintiff Kate Kersen, and their three children: Bonni, Ilene and Mathew, and as a result of said injuries and death they have sustained damages including loss of support, services, consortium, parental care and guidance, the prospect of inheritance of further

Complaint of Plaintiff Kersen

accumulations, funeral and burial expenses and other fair and just damages.

9. By reason of the premises, plaintiff Kate Kersen, as Administratrix and Administratrix Ad Prosequendum of the Estate of Elbert Kersen, has been damaged in the sum of EIGHT HUNDRED FIFTY THOUSAND (\$350,000) DOLLARS.

A SECOND CLAIM FOR RELIEF FOR THE PAIN AND SUFFERING OF ELBERT KERSEN, DECEASED, BASED UPON DEFENDANT'S WILFUL MISCONDUCT

10. Plaintiff repeats and realleges each and every allegation contained in Paragraphs 1 through 7.

11. Prior to his death, Elbert Kersen, deceased, consciously suffered great physical pain and mental anguish in contemplation of his impending death.

12. By reason of the premises, plaintiff as Administratrix and Administratrix Ad Prosequendum of the Estate of Elbert Kersen, deceased, has been damaged in the sum of ONE HUNDRED THOUSAND (\$100,000) DOLLARS.

A THIRD CLAIM FOR RELIEF FOR THE WRONGFUL DEATH OF ELBERT KERSEN, BASED ON THE MONTREAL AGREEMENT

13. Plaintiff repeats and realleges each and every allegation contained in Paragraphs 1 through 6, 8 and 11.

14. At all times mentioned, defendant filed a tariff and

Complaint of Plaintiff Kersen

agreement, also known as the Montreal Agreement, with the Civil Aeronautics Board of the United States of America which approved said tariff and agreement in C.A.B. No. 18 900 and Order No. E-23680, 31 Fed. Reg. 7302 (1967), which were in valid force and effect on August 5, 1973.

15. By reason thereof, plaintiff as Administratrix and Administratrix Ad Prosequendum has been damaged in the sum of SEVENTY FIVE THOUSAND (\$75,000) DOLLARS.

A FOURTH CLAIM FOR RELIEF FOR THE PERSONAL INJURIES SUSTAINED BY PLAINTIFF KATE KERSEN BASED ON THE MONTREAL AGREEMENT

16. Plaintiff repeats and realleges each and every allegation contained in Paragraphs 1 through 6 and 14.

17. On August 5, 1973, in Athens, Greece, while plaintiff was in the course of embarking on defendant's Flight 881 plaintiff sustained serious and severe personal injuries, mental pain and anguish and other damages.

18. By reason thereof, plaintiff Kate Kersen, individually has been damaged in the sum of SEVENTY FIVE THOUSAND (\$75,000) DOLLARS.

WHEREFORE, Plaintiff Kate Kersen, individually and as Administratrix and Administratrix Ad Prosequendum of the Estate of Elbert Kersen, deceased, demands judgment against the defendant on the FIRST CLAIM FOR RELIEF in the sum of EIGHT HUNDRED FIFTY

Complaint of Plaintiff Kersen

THOUSAND (\$850,000) DOLLARS; on the SECOND CLAIM FOR RELIEF in the sum of ONE HUNDRED THOUSAND (\$100,000) DOLLARS; on the THIRD CLAIM FOR RELIEF in the sum of SEVENTY FIVE THOUSAND (\$75,000) DOLLARS, and, on the FOURTH CLAIM FOR RELIEF in the sum of SEVENTY FIVE THOUSAND (\$75,000) DOLLARS, together with interest and the costs and disbursements of this action.

KREINDLER & KREINDLER
Attorneys for Plaintiff

By:


A Member of the Firm
99 Park Avenue
New York, New York 10016
212/ 687-8181

ANSWER TO COMPLAINT OF PLAINTIFF KERSEN

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

(E)

-----x
KATE KERSEN, individually and as :
Administratrix and Administratrix :
Ad Prosequendum of the Estate of :
ELBERT KERSEN, deceased, :
Plaintiff, : 73 Civ. 1489 (J.R.B.)
: :
-against- : ANSWER
TRANS WORLD AIRLINES, INC., : SERVED 10-30-75
Defendant. : By Mail
: FILED 11-1-75
By Haw
For WILLIAMS.
-----x

Defendant, Trans World Airlines, Inc., ("TWA")
by its attorneys, Chadbourn, Parke, Whiteside & Wolff,
answers the complaint as follows:

AS TO THE FIRST CLAIM FOR THE WRONGFUL DEATH
OF ELBERT KERSEN BASED ON WILFUL MISCONDUCT

FIRST: Denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph "1" of the complaint except admits that TWA is a Delaware corporation with its principal place of business in New York, New York.

SECOND: Denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraphs "2" and "4" of the complaint.

THIRD: Admits the allegations in paragraphs "3" and "6" of the complaint.

Answer to Complaint of Plaintiff Kersen

FOURTH: Denies each and every allegation contained in paragraphs "5," "7," "8," and "9" of the complaint.

AS TO THE SECOND CLAIM FOR PAIN AND
SUFFERING OF ELBERT KERSEN

FIFTH: Repeats and realleges each and every allegation, admission and denial made to the paragraphs of the complaint which are referred to in paragraph "10" of the complaint.

SIXTH: Denies each and every allegation contained in paragraphs "11" and "12" of the complaint.

AS TO THE THIRD CLAIM FOR THE WRONGFUL
DEATH OF ELBERT KERSEN BASED ON
THE MONTREAL AGREEMENT

SEVENTH: Repeats and realleges each and every allegation, admission and denial made to the paragraphs of the complaint which are referred to in paragraph "13" of the complaint.

EIGHTH: Admits the allegations contained in paragraph "14" of the complaint.

NINTH: Denies each and every allegation contained in paragraph "15" of the complaint.

AS TO THE FOURTH CLAIM FOR PERSONAL INJURIES
OF KATE KERSEN BASED ON THE MONTREAL
AGREEMENT

TENTH: Repeats and realleges each and every allegation, admission and denial made to the paragraphs

Answer to Complaint of Plaintiff Kersen

of the complaint which are referred to in paragraph "16" of the complaint.

ELEVENTH: Denies each and every allegation contained in paragraphs "17" and "18" of the complaint.

WHEREFORE, defendant, TWA, demands judgment dismissing the complaint together with the costs and disbursements of this action.

CHADBOURNE, PARKE, WHITESIDE & WOLFF

By J. B. Pennington

A member of the firm
Attorneys for Defendant
25 Broadway
New York, New York 10004
(212) 344-8900

COMPLAINT OF PLAINTIFFS SPIRIDAKIS

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

E

JOHN SPIRIDAKIS, BESSIE SPIRIDAKIS,
LEONARD LAZARUS, SHIRLEY LAZARUS,
ARNOLD ROSE and HELEN ROSE,

Plaintiffs demand
trial by jury.

-against-

Plaintiffs,

VERIFIED COMPLAINT

TRANSWORLD AIRLINES, INC.,

Defendant.

x

Plaintiffs, by their attorneys, BROWN, HURWITZ, SEIDMAN,
EHRLICH & ZASKY, ESQS., complaining of the defendant, allege as
follows:

AS AND FOR A FIRST CAUSE OF ACTION
FOR PERSONAL INJURIES ON BEHALF OF
PLAINTIFF JOHN SPIRIDAKIS

1. At all times hereinafter mentioned, plaintiff JOHN SPIRIDAKIS was and still is an individual residing in the State of New York.
2. At all times hereinafter mentioned, the defendant TRANSWORLD AIRLINES, INC., (hereinafter referred to as "TWA"), was and still is a corporation duly organized and existing under and by virtue of the laws of the State of Delaware, doing business and having a place of business in the State of New York, and having its principal place of business in a State other than the State of New York.

3. The amount in controversy herein exceeds the amount of Ten Thousand (\$10,000.00) Dollars, exclusive of interest and costs.

Complaint of Plaintiffs Spiridakis

4. By reason of the diversity of citizenship between the plaintiffs and defendant, and by reason of the amount in controversy, this Honorable Court has jurisdiction of the parties and the subject matter herein.

5. At all times hereinafter mentioned, defendant TWA was a common carrier of passengers by airplane and was engaged as such carrier in the State of New York and elsewhere in international flights from New York to Athens, Greece and elsewhere.

6. Prior to the 5th day of August, 1973, plaintiff had for valuable consideration purchased tickets from the defendant which provided for air passage by the defendant from New York City to Athens, Greece, and return therefrom to New York City.

7. On or about the 5th day of August, 1973, pursuant to said ticket, plaintiff was a passenger for hire on the flight of the defendant which was to leave Athens, Greece, bound for New York City.

8. During the course of the operation of embarking on said flight, being Flight No. 881, plaintiff was attacked by persons identified as "Guerillas", which resulted in severe physical injuries to the plaintiff.

9. The said accident and injuries were caused solely by the negligence of the defendant, its agents, servants and/or employees in the operation, maintenance and control of the said airplane in that, among other things, defendant negligently failed to provide for a safe place for the passengers to board

Complaint of Plaintiffs Spiridakis

and that the defendant failed to provide adequate security for the conditions then and there existing or which the defendant should have known existed under the circumstances, and that the defendant TWA knowing of the propensities and activities of the said "Guerillas", failed to safely maintain the boarding area, to wit: changing the flight departure signs to correctly reflect the destination of the flight herein "New York" rather than "Tel-Aviv", and the defendant was otherwise careless and negligent, all without any fault or contributory negligence on the part of the plaintiff.

10. By reason of the foregoing, plaintiff JOHN SPIRIDAKIS, was injured and damaged by shrapnel from a hand-grenade, among other respects, as follows:

(a) He was bruised, wounded and otherwise injured so that he became sick, sore, lame and disabled and continued so to be.

(b) His hearing was impaired.

(c) He sustained a severe nervous shock and continues to be in said condition.

(d) He underwent and will necessarily undergo a long and painful treatment in endeavoring to cure and relieve himself from the aforesaid injuries.

(e) He suffered and continues to suffer great physical and mental pain, anguish and distress.

(f) He was obliged to expend large sums of money for medical and other aid and attendance, and for medicines,

Complaint of Plaintiffs Spiridakis

and will necessarily continue to do so.

(g) He was unable to attend to his usual occupation and employment for a long period of time and was deprived from his income and earnings therefrom.

(h) Many of his aforesaid injuries are permanent.

(i) He was otherwise injured and damaged.

11. All to the plaintiff's damage in the sum of Five Hundred Thousand (\$500,000.00) Dollars.

AS AND FOR A SECOND CAUSE OF ACTION
ON BEHALF OF PLAINTIFF JOHN SPIRIDAKIS

12. Plaintiff repeats, reiterates and realleges each and every allegation contained in Paragraphs 1 through 8, and Paragraph 10 herein, with the same force and effect as though fully set forth at length herein.

13. At all times hereinafter mentioned, the United States of America and Greece were and still are parties to an International Treaty, the Convention for the Unification of certain rules relating to International Transportation by Air, commonly known as the "Warsaw Convention", 49 STAT., 3000 et seq.

14. Said passage provided for by said ticket and said flight was "International Transportation", as defined by Article 1 of the Warsaw Convention.

15. Defendant failed to deliver to plaintiff tickets containing the statement that the transportation was subject to the rules relating to liability and established by the Warsaw Convention in an appropriate and proper form and as required by Article 3 of the Warsaw Convention.

Complaint of Plaintiffs Spiridakis

16. By reason of these premises and Article 3 of the said Warsaw Convention, the defendant is not entitled to avail itself of those provisions of the Warsaw Convention which exclude or limit its liability.

17. By reason of these premises, plaintiff has been damaged in the sum of Five Hundred Thousand (\$500,000.00) Dollars

AS AND FOR A THIRD CAUSE OF ACTION
FOR PERSONAL INJURIES ON BEHALF OF
PLAINTIFF JOHN SPIRIDAKIS

18. Plaintiff repeats, reiterates and realleges each and every allegation contained in Paragraphs 1 through 8, Paragraphs 10, 13 and 14 herein, with the same force and effect as though fully set forth at length herein.

19. The injuries sustained by plaintiff and his damages were the result of the wilfull misconduct or the equivalent or wilfull misconduct on the part of the defendant.

20. By reason of these premises and Article 25 of the Warsaw Convention, plaintiff was damaged in the sum of Five Hundred Thousand (\$500,000.00) Dollars.

~~21. At all times hereinafter mentioned, the defendant
operated under a tariff filed with the Civil Aeronautics Board,
which incorporated the provisions of Agreement C.A.B. 18900,~~

21. Plaintiff repeats, reiterates and realleges each and every allegation contained in Paragraphs 1 through 8, and Paragraph 10 herein, with the same force and effect as though fully set forth at length herein.

22. At all times hereinafter mentioned, the defendant operated under a tariff filed with the Civil Aeronautics Board, which incorporated the provisions of Agreement C.A.B. 18900,

Complaint of Plaintiffs Spiridakis

to which the defendant was a party.

23. By reason of these premises, the defendant is absolutely liable for the entire damages sustained by plaintiffs but not in a sum to exceed Seventy Five Thousand (\$75,000.00) Dollars.

AS AND FOR A FIFTH CAUSE OF ACTION
ON BEHALF OF PLAINTIFF BESSIE SPIRIDAKIS

24. That at all times hereinafter mentioned, plaintiff BESSIE SPIRIDIKAS was the wife of JOHN SPIRIDAKIS, and as such has lived and cohabited with her said husband.

25. At all times hereinafter mentioned and prior to August 5, 1973, plaintiff JOHN SPIRIDAKIS supported plaintiff BESSIE SPIRIDAKIS and was capable of performing his duties as her husband.

26. That as a result of the negligence of the defendant, plaintiff BESSIE SPIRIDAKIS sustained the loss of services, society, companionship and consortium of her husband, plaintiff JOHN SPIRIDAKIS.

27. By reason of the foregoing, plaintiff BESSIE SPIRIDAKIS sustained damages in the sum of Fifty Thousand (\$50,000.00) Dollars.

AS AND FOR A SIXTH CAUSE OF ACTION
ON BEHALF OF PLAINTIFF LEONARD LAZARUS

28. At all times hereinafter mentioned, plaintiff LEONARD LAZARUS was and still is a resident of the State of New York.

29. Plaintiff repeats, reiterates and realleges each and every allegation contained in Paragraphs 2 through 9 with

Complaint of Plaintiffs Spiridakis

the same force and effect as though fully set forth at length herein.

30. Plaintiff LEONARD LAZARUS was injured and damaged by shrapnel from a hand-grenade, among other respects, as follows:

(a) He was bruised, wounded and otherwise injured so that he became sick, sore, lame and disabled and continued so to be.

(b) He suffered and continues to suffer a loss of strength in his left arm.

(c) He sustained a severe nervous shock and continues to be in said condition.

(d) He underwent and will necessarily undergo a long and painful treatment in endeavoring to cure and relieve himself from the aforesaid injuries.

(e) He suffered and continues to suffer great physical and mental pain, anguish and distress.

(f) he was obliged to expend large sums of money for medical and other aid and attendance, and for medicines, and will necessarily continue to do so.

(g) He was unable to attend to his usual occupation and employment for a long period of time and was deprived from his income and earnings therefrom.

(h) Many of his aforesaid injuries are permanent.

(i) He was otherwise injured and damaged.

31. All to the plaintiff's damage in the sum of

Complaint of Plaintiffs Spiridakis

Five Hundred Thousand (\$500,00.00) Dollars.

AS AND FOR A SEVENTH CAUSE OF ACTION
ON BEHALF OF PLAINTIFF LEONARD LAZARUS

32. Plaintiff LEONARD LAZARUS repeats, reiterates and realleges each and every allegation contained in Paragraphs 2 through 8, and Paragraphs 13 through 16, and paragraphs 28 and 30, with the same force and effect as though fully set forth at length herein.

33. By reason of these premises, plaintiff was damaged in the sum of Five Hundred Thousand (\$500,000.00) Dollars.

AS AND FOR AN EIGHTH CAUSE OF ACTION
ON BEHALF OF PLAINTIFF LEONARD LAZARUS

34. Plaintiff repeats, reiterates and realleges each and every allegation contained in Paragraphs 2 through 8, and Paragraph 13 and 14, 19 and 30 with the same force and effect as though fully set forth at length herein.

35. By reason of these premises and Article 25 of the Warsaw Convention, plaintiff LEONARD LAZARUS was damaged in the sum of Five Hundred Thousand (\$500,000.00) Dollars.

AS AND FOR A NINTH CAUSE OF ACTION
ON BEHALF OF PLAINTIFF LEONARD LAZARUS

36. Plaintiff repeats, reiterates and realleges each and every allegation contained in Paragraphs 2 through 9, and Paragraphs 22 and 29 with the same force and effect as though fully set forth at length herein.

37. By reason of these premises, the defendant is absolutely liable for the entire damages sustained by plaintiff but not in a sum to exceed Seventy Five Thousand (\$75,000.00)

Complaint of Plaintiffs Spiridakis

Dollars.

AS AND FOR A TENTH CAUSE OF ACTION
ON BEHALF OF PLAINTIFF SHIRLEY LAZARUS

38. That at all times hereinafter mentioned, plaintiff SHIRLEY LAZARUS was the wife of LEONARD LAZARUS, and as such has lived and cohabited with said husband.

39. At all times hereinafter mentioned, prior to August 5, 1973, plaintiff LEONARD LAZARUS supported plaintiff SHIRLEY LAZARUS and was capable of performing his duties as her husband.

40. That as a result of the negligence, as aforesaid, plaintiff SHIRLEY LAZARUS sustained the loss of services, society companionship and consortium of her husband, plaintiff LEONARD LAZARUS.

41. By reason of the foregoing, plaintiff SHIRLEY LAZARUS was damaged in the sum of Fifty Thousand (\$50,000.00) Dollars.

AS AND FOR AN ELEVENTH CAUSE OF ACTION
ON BEHALF OF PLAINTIFF SHIRLEY LAZARUS

42. At all times hereinafter mentioned, plaintiff Shirley Lazarus was and still is a resident of the State of New York.

43. Plaintiff repeats, reiterates and realleges each and every allegation contained in Paragraphs 2 through 9, with the same force and effect as though fully set forth at length herein.

44. Plaintiff Shirley Lazarus, was injured and damaged by shrapnel from a hand-grenade, among other respects, as follows:

(a) She was bruised, wounded and otherwise injured so as to become sick, sore, lame and disabled and con-

Complaint of Plaintiffs Spiridakis

tinued so to be.

(b) She sustained a severe nervous shock and continues to be in said condition.

(c) She underwent and will necessarily undergo a long and painful treatment in endeavoring to cure and relieve herself from the aforesaid injuries.

(d) She suffered and continues to suffer great physical and mental pain, anguish and distress.

(e) She was obliged to expend large sums of money for medical and other aid and attendance and for medicines, and will necessarily continue to do so.

(f) She was unable to attend to her usual occupation and employment for a long period of time and was deprived from her income and earnings therefrom.

(g) Many of her aforesaid injuries are permanent.

(h) She was otherwise injured and damaged.

45. All to the plaintiff's damage in the sum of Two Hundred Fifty Thousand (\$250,000.00) Dollars.

AS AND FOR A TWELFTH CAUSE OF ACTION
ON BEHALF OF PLAINTIFF SHIRLEY LAZARUS

46. Plaintiff repeats, reiterates and realleges each and every allegation contained in Paragraph 2 through 8, and Paragraphs 13 through 16, Paragraphs 42 and 44 herein, with the same force and effect as though fully set forth at length herein.

47. By reason of these premises, plaintiff has been damaged in the sum of Two Hundred Fifty Thousand (\$250,000.00) Dollars.

Complaint of Plaintiffs Spiridakis

AS AND FOR A THIRTEENTH CAUSE OF ACTION
ON BEHALF OF PLAINTIFF SHIRLEY LAZARUS

48. Plaintiff SHIRLEY LAZARUS repeats, reiterates and realleges each and every allegation contained in Paragraphs 2 through 8, Paragraphs 13 and 14 through 19, and Paragraphs 42 and 44 herein, with the same force and effect as though fully set forth at length herein.

49. By reason of these premises and Article 25 of the Warsaw Convention, plaintiff SHIRLEY LAZARUS has been damaged in the sum of Two Hundred Fifty Thousand (\$250,000.00) Dollars.

AS AND FOR A FOURTEENTH CAUSE OF ACTION
ON BEHALF OF PLAINTIFF SHIRLEY LAZARUS

50. Plaintiff repeats, reiterates and realleges each and every allegation contained in Paragraphs 2 through 8, Paragraphs 22, 42 and 44 herein, with the same force and effect as though fully set forth at length herein.

51. By reason of these premises, the defendant is absolutely liable for the entire damages sustained by plaintiffs LEONARD LAZARUS and SHIRLEY LAZARUS, but not in a sum to exceed the sum of Seventy Five Thousand (\$75,000.00) Dollars.

AS AND FOR A FIFTEENTH CAUSE OF ACTION
ON BEHALF OF PLAINTIFF LEONARD LAZARUS

52. That at all times hereinafter mentioned, plaintiff LEONARD LAZARUS was the husband of SHIRLEY LAZARUS, and as such has lived and cohabited with said wife.

53. At all times hereinafter mentioned, prior to August 5, 1973, plaintiff SHIRLEY LAZARUS was capable of performing her duties as his wife.

Complaint of Plaintiff Spiridakis

54. That as a result of the negligence, as aforesaid, plaintiff LEONARD LAZARUS sustained the loss of services, society, companionship and consortium of his wife, SHIRLEY LAZARUS.

55. By reason of the foregoing, plaintiff LEONARD LAZARUS sustained damages in the sum of Fifth Thousand (\$50,000.00) Dollars.

AS AND FOR A SIXTEENTH CAUSE OF ACTION
ON BEHALF OF PLAINTIFF ARNOLD ROSE

56. At all times hereinafter mentioned, plaintiff ARNOLD ROSE was and still is a resident of the State of New Jersey.

57. At all times hereinafter mentioned, defendant TWA was and still is a corporation duly organized and existing under and by virtue of the laws of the State of Delaware, doing business and having a place of business in the State of New York, and having its principal place of business in a state other than in the State of New Jersey.

58. Plaintiff repeats, reiterates and realleges each and every allegation contained in Paragraphs 3 through 9 herein, with the same force and effect as though fully set forth at length herein.

59. Plaintiff ARNOLD ROSE was injured by a machine gun bullet, among other respects, as follows:

(a) He was bruised, wounded and otherwise injured so that he became sick, sore, lame and disabled and continued so to be.

(b) He sustained a severe nervous shock and continues to be in said condition.

Complaint of Plaintiffs Spiridakis

(c) He underwent and will necessarily undergo a long and painful treatment in endeavoring to cure and relieve himself from the aforesaid injuries.

(d) He suffered and continues to suffer great physical and mental pain, anguish and distress.

(e) He was obliged to expend large sums of money for medicine and other aid and attendance and for medicines, and will necessarily continue to do so.

(f) He was unable to attend to his usual occupation and employment for a long period of time and was deprived from his income and earnings therefrom.

(g) Many of his aforesaid injuries are permanent.

(h) He was otherwise injured and damaged.

60. All to the plaintiff's damage in the sum of One Hundred Fifty Thousand (\$150,000.00) Dollars.

AS AND FOR A EIGHTEENTH CAUSE OF ACTION
ON BEHALF OF PLAINTIFF ARNOLD ROSE

61. Plaintiff repeats, reiterates and realleges each and every allegation contained in Paragraphs 3 through 8, Paragraphs 13 through 16, and Paragraphs 56 and 57 herein, with the same force and effect as though fully set forth at length herein.

62. By reason of these premises, plaintiff ARNOLD ROSE has been damaged in the sum of One Hundred Fifty Thousand (\$150,000.00) Dollars.

AS AND FOR AN EIGHTEENTH CAUSE OF ACTION
ON BEHALF OF PLAINTIFF ARNOLD ROSE

63. Plaintiff repeats, reiterates and realleges each

Complaint of Plaintiffs Spiridakis

and every allegation contained in Paragraphs 3 through 8, Paragraphs 13 and 14, Paragraphs 19, 56 and 57 herein, with the same force and effect as though fully set forth at length herein.

64. By reason of these premises and Article 25 of the Warsaw Convention, plaintiff has been damaged in the sum of One Hundred Fifty Thousand (\$150,000.00) Dollars.

AS AND FOR A NINETEENTH CAUSE OF ACTION
ON BEHALF OF PLAINTIFF ARNOLD ROSE

65. Plaintiff repeats, reiterates and realleges each and every allegation contained in Paragraphs 3 through 8, Paragraphs 22, 56 and 57, and 59 herein, with the same force and effect as though fully set forth at length herein

66. By reason of these premises, the defendant is absolutely liable for the entire amount of damages sustained by plaintiff but not in a sum to exceed Seventy Five Thousand (\$75,000.00) Dollars.

AS AND FOR A TWENTIETH CAUSE OF ACTION
ON BEHALF OF PLAINTIFF ARNOLD ROSE

67. That at all times herein mentioned, plaintiff ARNOLD ROSE was the husband of HELEN ROSE, and as such has lived and cohabited with said wife.

68. At all times hereinafter mentioned, prior to August 5, 1973, plaintiff ARNOLD ROSE supported plaintiff HELEN ROSE and was capable of performing his duties as a husband.

69. That as a result of the negligence, as aforesaid, plaintiff ARNOLD ROSE sustained the loss of services, society, companionship and consortium of his wife, HELEN ROSE.

70. By reason of the foregoing, plaintiff HELEN ROSE

Complaint of Plaintiffs Spiridakis

sustained damages in the sum of Fifty Thousand (\$50,000.00) Dollars.

AS AND FOR A TWENTY-FIRST CAUSE OF ACTION
ON BEHALF OF PLAINTIFF HELEN ROSE

71. At all times hereinafter mentioned, plaintiff HELEN ROSE was and still is a resident of the State of New Jersey.

72. Plaintiff repeats, reiterates-and realleges each and every allegation contained in Paragraphs 3 through 9, and Paragraph 57 herein, with the same force and effect as though fully set forth at length herein.

73. Plaintiff HELEN ROSE was injured by a machine gun bullet, among other respects, as follows:

(a) She was bruised, wounded and otherwise injured so that she became sick, sore, lame and disabled and continued so to be.

(b) She sustained a severe nervous shock and continues to be in said condition.

(c) She underwent and will necessarily undergo a long and painful treatment in endeavoring to cure and relieve herself from the aforesaid injuries.

(d) She suffered and continues to suffer great physical and mental pain, anguish and distress.

(e) She was obliged to expend large sums of money for medical and other aid and attendance and for medicines, and will necessarily continue to do so.

(f) She was unable to attend to her usual occupation and employment for a long period of time and was deprived from

Complaint of Plaintiffs Spiridakis

her income and earnings therefrom.

(h) Many of her aforesaid injuries are permanent.

(i) She was otherwise injured and damaged.

74. All to the plaintiff HELEN ROSE's damage in the sum of One Hundred Fifty Thousand (\$150,000.00) Dollars.

AS AND FOR A TWENTY-SECOND CAUSE OF ACTION
ON BEHALF OF PLAINTIFF HELEN ROSE

75. Plaintiff repeats, reiterates and realleges each and every allegation contained in Paragraphs 3 through 8, and Paragraphs 13 through 16, and Paragraphs 71 and 73 herein, with the same force and effect as though fully set forth at length herein.

76. By reason of the premises, plaintiff HELEN ROSE was damaged in the sum of One Hundred Fifty Thousand (\$150,000.00) Dollars.

AS AND FOR A TWENTY-THIRD CAUSE OF ACTION
ON BEHALF OF PLAINTIFF HELEN ROSE

77. Plaintiff repeats, reiterates and realleges each and every allegation contained in Paragraphs 3 through 8, Paragraphs 13 and 14, and Paragraphs 57, 71 and 73 herein, with the same force and effect as though fully set forth at length herein.

78. By reason of these premises and Article 25 of the Warsaw Convention, plaintiff HELEN ROSE has been damaged in the sum of One Hundred Fifty Thousand (\$150,000.00) Dollars.

AS AND FOR A TWENTY-FOURTH CAUSE OF ACTION
ON BEHALF OF PLAINTIFF HELEN ROSE

79. Plaintiff repeats, reiterates and realleges each

Complaint of Plaintiffs Spiridakis

and every allegation contained in Paragraphs 3 through 8, and Paragraphs 22, 57, 71 and 73 herein, with the same force and effect as though fully set forth at length herein.

80. By reason of these premises, the defendant is absolutely liable for the entire damages sustained by plaintiff but not in a sum to exceed Seventy Five Thousand (\$75,000.00) Dollars.

AS AND FOR A TWENTY-FIFTH CAUSE OF ACTION
ON BEHALF OF PLAINTIFF HELEN ROSE

81. That at all times herein mentioned, plaintiff HELEN ROSE was the wife of ARNOLD ROSE, and as such has lived and cohabited with said husband.

82. At all times hereinafter mentioned, prior to August 5, 1973 plaintiff HELEN ROSE was supported by her husband ARNOLD ROSE, and was capable of performing her duties as a wife.

83. That as a result of the negligence, as aforesaid, plaintiff HELEN ROSE sustained the loss of services, society, companionship and consortium of her husband ARNOLD ROSE.

84. By reason of the foregoing, plaintiff HELEN ROSE sustained damages in the sum of Fifty Thousand (\$50,000.00) Dollars.

WHEREFORE, plaintiffs JOHN SPIRIDAKIS, BESSIE SPIRIDAKIS, LEONARD LAZARUS, SHIRLEY LAZARUS, ARNOLD ROSE and HELEN ROSE, demand judgment against the defendant TWA, as follows:

Plaintiff JOHN SPIRIDAKIS demands judgment against the defendant on the first cause of action in the sum of Five Hundred Thousand (\$500,000.00) Dollars; on the second cause of

A 41
Complaint of Plaintiffs Spiridakis

action in the sum of Five Hundred Thousand (\$500,000.00) Dollars; on the third cause of action in the sum of Five Hundred Thousand (\$500,000.00) Dollars; on the fourth cause of action in the sum of Seventy Five Thousand (\$75,000.00) Dollars, plus the costs and disbursements of this action.

Plaintiff BESSIE SPIRIDAKIS demands judgment against the defendant on the fifth cause of action in the sum of Fifty Thousand Dollars, plus the costs and disbursements of this action

Plaintiff LEONARD LAZARUS demands judgment against the defendant on the sixth cause of action in the sum of Five Hundred Thousand (\$500,000.00) Dollars; on the seventh cause of action in the sum of Five Hundred Thousand Dollars (\$500,000.00); on the eighth cause of action in the sum of Five Hundred Thousand (\$500,000.00) Dollars; on the ninth cause of action in the sum of Seventy Five Thousand (\$75,000.00) Dollars, plus the costs and disbursements of this action.

Plaintiff SHIRLEY LAZARUS demands judgment against the defendant on the tenth cause of action in the sum of Fifty Thousand (\$50,000.00) Dollars; on the eleventh cause of action in the sum of Two Hundred Fifty Thousand (\$250.00) Dollars; on the twelfth cause of action in the sum of Two Hundred Fifty Thousand (\$250,000.00) Dollars; on the thirteenth cause in the sum of Two Hundred Fifty Thousand (\$250,000.00) Dollars, on the fourteenth cause of action in the sum of Seventy Five Thousand (\$75,000.00) Dollars, plus the costs and disbursements of this action.

Plaintiff LEONARD LAZARUS demands judgment against the defendant on the fifteenth cause of action in the sum of Fifty Thousand (\$50,000.00) Dollars, plus the costs and disbursements of this action.

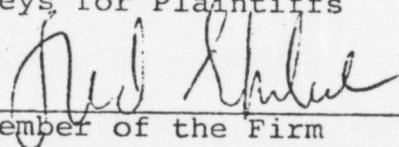
Complaint of Plaintiffs Spiridakis

Plaintiff ARNOLD ROSE demands judgment against the defendant on the sixteenth cause of action in the sum of One Hundred Fifty Thousand (\$150,000.00) Dollars; on the seventeenth cause of action in the sum of One Hundred Fifty Thousand (\$150,000.00 Dollars; on the eighteenth cause of action in the sum of One Hundred Fifty Thousand (\$150,000.00) Dollars, on the nineteenth cause of action in the sum of Seventy Five Thousand (\$75,000.00) Dollars; on the twentieth cause of action in the sum of Fifty Thousand (\$50,000.00) Dollars, plus the costs and disbursements of this action.

Plaintiff HELEN ROSE demands judgment against the defendant on the twenty-first cause of action in the sum of One Hundred Fifty Thousand (\$150,000.00) Dollars; on the twenty-second cause of action in the sum of One Hundred Fifty Thousand (\$150,000.00) Dollars; on the twenty third cause of action in the sum of One Hundred Fifty Thousand (\$150,000.00) Dollars; on the twenty-fourth cause of action in the sum of Seventy Five Thousand (\$75,000.00) Dollars; on the twenty-fifth cause of action in the sum of Fifty Thousand (\$50,000.00) plus the costs and disbursements of this action.

BROWN, HURWITZ, SEIDMAN,
EHRLICH & ZASKY,
Attorneys for Plaintiffs

By:


A Member of the Firm

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ANSWER TO THE COMPLAINT OF PLAINTIFFS SPIRIDAKIS

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

----- x
JOHN SPIRIDAKIS, BESSIE SPIRIDAKIS, :
LEONARD LAZARUS, SHIRLEY LAZARUS,
ARNOLD ROSE and HELEN ROSE, :
----- x

SERVED OCT 11 1974
By mail
FILED OCT 24 1974
By hand
Per Bellotti, Wm.

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Plaintiffs, :	<u>ANSWER</u>
- against - :	
TRANS WORLD AIRLINES, INC., :	74 CIV. 4191 (C.L.B., Jr.)
Defendant. :	

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Defendant, Trans World Airlines, Inc. ("TWA") by
its attorneys, Chadbourn, Parke, Whiteside & Wolff, answers
the complaint as follows:

AS TO THE FIRST CAUSE OF
ACTION OF JOHN SPIRIDAKIS

FIRST: Denies knowledge or information sufficient
to form a belief as to the truth of the allegations contained
in paragraph "1" of the complaint.

SECOND: Denies each and every allegation contained
in paragraph "2" of the complaint, except admits that TWA is
a corporation duly organized and existing under and by virtue
of the laws of the State of Delaware, doing business and hav-
ing a place of business in the State of New York.

THIRD: Denies knowledge or information sufficient
to form a belief as to the truth of the allegations contained
in paragraphs "3" and "4" of the complaint.

FOURTH: Admits the allegations contained in par-
agraph "5" of the complaint.

FIFTH: Denies each and every allegation contained
in paragraph "6" of the complaint, except admits that a ticket

Answer to the Complaint of Plaintiffs Spiridakis

providing for air passage by defendant from New York, New York to Athens, Greece and return therefrom to New York, New York was issued in the name of "Mr. J. Spyridakis."

SIXTH: Denies each and every allegation contained in paragraphs "7", "8", "9", "10" and "11" of the complaint.

AS TO THE SECOND CAUSE OF ACTION OF JOHN SPIRIDAKIS

SEVENTH: Repeats and realleges each and every allegation, admission and denial made to the paragraphs of the complaint which are referred to in paragraph "12" of the complaint.

EIGHTH: Admits the allegations contained in paragraphs "13" and "14" of the complaint.

NINTH: Denies each and every allegation contained in paragraphs "15", "16", and "17" of the complaint.

AS TO THE THIRD CAUSE OF ACTION OF JOHN SPIRIDAKIS

TENTH: Repeats and realleges each and every allegation, admission and denial made to the paragraphs of the complaint which are referred to in paragraph "18" of the complaint.

ELEVENTH: Denies each and every allegation contained in paragraphs "19" and "20" of the complaint.

AS TO THE FOURTH CAUSE OF ACTION OF JOHN SPIRIDAKIS

TWELFTH: Repeats and realleges each and every allegation, admission and denial made to the paragraphs of the complaint which are referred to in paragraph "21" of the complaint.

Answer to the Complaint of Plaintiff Spiridakis

THIRTEENTH: Denies each and every allegation contained in paragraph "22" of the complaint, except admits that TWA is a signatory to the Montreal Agreement (Civil Aeronautics Board Agreement 18900, Order Special No. E-23680, May 13, 1966).

FOURTEENTH: Denies each and every allegation contained in paragraph "23" of the complaint.

AS TO THE FIFTH CAUSE OF ACTION OF BESSIE SPIRIDAKIS

FIFTEENTH: Denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraphs "24" and "25" of the complaint.

SIXTEENTH: Denies each and every allegation contained in paragraphs "26" and "27" of the complaint.

AS TO THE SIXTH CAUSE OF ACTION OF LEONARD LAZARUS

SEVENTEENTH: Denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph "28" of the complaint.

EIGHTEENTH: Denies each and every allegation contained in paragraph "6" of the complaint which is referred to in paragraph "29" of the complaint, except admits that a ticket providing for air passage by defendant from New York, New York to Athens, Greece and return therefrom to New York, New York was issued in the name of "Mr. G. Lazaros," and repeats and realleges each and every allegation, admission and denial made to the other paragraphs of the complaint which are referred to in paragraph "29" of the complaint.

Answer to the Complaint of Plaintiffs Spiridakis

NINETEENTH: Denies each and every allegation contained in paragraphs "30" and "31" of the complaint.

AS TO THE SEVENTH CAUSE OF
ACTION OF LEONARD LAZARUS

TWENTIETH: Denies each and every allegation contained in paragraph "6" of the complaint which is referred to in paragraph "32" of the complaint, except admits that a ticket providing for air passage by defendant from New York, New York to Athens, Greece and return therefrom to New York, New York was issued in the name of "Mr. G. Lazaros," and repeats and realleges each and every allegation, admission and denial made to the other paragraphs of the complaint which are referred to in paragraph "32" of the complaint.

TWENTY-FIRST: Denies each and every allegation contained in paragraph "33" of the complaint.

AS TO THE EIGHTH CAUSE OF
ACTION OF LEONARD LAZARUS

TWENTY-SECOND: Denies each and every allegation contained in paragraph "6" of the complaint which is referred to in paragraph "34" of the complaint, except admits that a ticket providing for air passage by defendant from New York, New York to Athens, Greece and return therefrom to New York, New York was issued in the name of "Mr. G. Lazaros," and repeats and realleges each and every allegation, admission and denial made to the other paragraphs of the complaint which are referred to in paragraph "34" of the complaint.

TWENTY-THIRD: Denies each and every allegation contained in paragraph "35" of the complaint.

Answer to the Complaint of Plaintiffs Spiridakis

AS TO THE NINTH CAUSE OF
ACTION OF LEONARD LAZARUS

TWENTY-FOURTH: Denies each and every allegation contained in paragraph "6" of the complaint which is referred to in paragraph "36" of the complaint, except admits that a ticket providing for air passage by defendant from New York, New York to Athens, Greece and return therefrom to New York, New York was issued in the name of "Mr. G. Lazaros," and claims it paragraph "36" of the complaint which is referred repeats and realleges each and every allegation, admission and denial made to the other paragraphs of the complaint which are referred to in paragraph "36" of the complaint.

TWENTY-FIFTH: Denies each and every allegation contained in paragraph "37" of the complaint.

AS TO THE TENTH CAUSE OF
ACTION OF SHIRLEY LAZARUS

TWENTY-SIXTH: Denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraphs "38" and "39" of the complaint.

TWENTY-SEVENTH: Denies each and every allegation contained in paragraphs "40" and "41" of the complaint.

AS TO THE ELEVENTH CAUSE
OF ACTION OF SHIRLEY LAZARUS

TWENTY-EIGHTH: Denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph "42" of the complaint.

TWENTY-NINTH: Denies each and every allegation contained in paragraph "6" of the complaint which is referred to in paragraph "43" of the complaint, except admits that a ticket providing for air passage by defendant from New York,

Answer to the Complaint of Plaintiffs Spiridakis

New York to Athens, Greece and return therefrom to New York, New York was issued in the name of "Mrs. L. Lazaros," and repeats and realleges each and every allegation, admission and denial made to the other paragraphs of the complaint which are referred to in paragraph "43" of the complaint.

THIRTIETH: Denies each and every allegation contained in paragraphs "44" and "45" of the complaint.

AS TO THE TWELFTH CAUSE OF ACTION OF SHIRLEY LAZARUS

New York was issued in the name of "Mrs. L. Lazaros," and repeats and realleges each and every allegation contained in paragraph "6" of the complaint which is referred to in paragraph "46" of the complaint, except admits that a ticket providing for air passage by defendant from New York, New York to Athens, Greece and return therefrom to New York, New York was issued in the name of "Mrs. L. Lazaros," and repeats and realleges each and every allegation, admission and denial made to the other paragraphs of the complaint which are referred to in paragraph "46" of the complaint.

THIRTY-SECOND: Denies each and every allegation contained in paragraph "47" of the complaint.

AS TO THE THIRTEENTH CAUSE OF ACTION OF SHIRLEY LAZARUS

THIRTY-THIRD: Denies each and every allegation contained in paragraph "6" of the complaint which is referred to in paragraph "48" of the complaint, except admits that a ticket providing for air passage by defendant from New York, New York to Athens, Greece and return therefrom to New York, New York was issued in the name of "Mrs. L. Lazaros," and

Answer to the Complaint of Plaintiffs Spiridakis

repeats and realleges each and every allegation, admission and denial made to the other paragraphs which are referred to in paragraph "48" of the complaint.

THIRTY-FOURTH: Denies each and every allegation contained in paragraph "49" of the complaint.

AS TO THE FOURTEENTH CAUSE OF ACTION OF SHIRLEY LAZARUS

THIRTY-FIFTH: Denies each and every allegation contained in paragraph "6" of the complaint which is referred to in paragraph "50" of the complaint, except admits that a ticket providing for air passage by defendant from New York, New York to Athens, Greece and return therefrom to New York, New York was issued in the name of "Mrs. L. Lazaros," and repeats and realleges each and every allegation, admission and denial made to the other paragraphs of the complaint which are referred to in paragraph "50" of the complaint.

THIRTY-SIXTH: Denies each and every allegation contained in paragraph "51" of the complaint.

AS TO THE FIFTEENTH CAUSE OF ACTION OF LEONARD LAZARUS

THIRTY-SEVENTH: Denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraphs "52" and "53" of the complaint.

THIRTY-EIGHTH: Denies each and every allegation contained in paragraphs "54" and "55" of the complaint.

Answer to the Complaint of Plaintiffs S. Midakis

AS TO THE SIXTEENTH CAUSE OF
ACTION OF ARNOLD ROSE

THIRTY-NINTH: Denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph "56" of the complaint.

FORTIETH: Admits the allegations contained in paragraph "57" of the complaint.

FORTY-FIRST: Denies each and every allegation contained in paragraph "6" of the complaint which is referred to in paragraph "58" of the complaint, except admits that a ticket providing for air passage by defendant from New York, New York to Athens, Greece and return therefrom to New York, New York was issued in the name of "Mr. A. Rose," and repeats and realleges each and every allegation, admission and denial made to the other paragraphs of the complaint which are referred to in paragraph "58" of the complaint. Issued in the name of "Mr. A. Rose," etc., repeats and FORTY-SECOND: Denies each and every allegation contained in paragraphs "59" and "60" of the complaint.

AS TO THE SEVENTEENTH CAUSE OF
ACTION OF ARNOLD ROSE

FORTY-THIRD: Denies each and every allegation contained in paragraph "6" of the complaint which is referred to in paragraph "61" of the complaint, except admits that a ticket providing for air passage by defendant from New York, New York to Athens, Greece and return therefrom to New York, New York was issued in the name of "Mr. A. Rose," and repeats and realleges each and every allegation, admission and denial made to the other paragraphs of the com-

Answer to the Complaint of Plaintiffs Spiridakis

plaint which are referred to in paragraph "61" of the complaint.

FORTY-FOURTH: Denies each and every allegation contained in paragraph "62" of the complaint.

AS TO THE EIGHTEENTH CAUSE OF ACTION OF ARNOLD ROSE

FORTY-FIFTH: Denies each and every allegation contained in paragraph "63" of the complaint which is referred to in paragraph "63" of the complaint, except admits that a ticket providing for air passage by defendant from New York, New York to Athens, Greece and return therefrom to New York, New York was issued in the name of "Mr. A. Rose," and repeats and realleges each and every allegation, admission and denial made to the other paragraphs of the complaint which are referred to in paragraph "63" of the complaint.

FORTY-SIXTH: Denies each and every allegation contained in paragraph "64" of the complaint.

AS TO THE NINETEENTH CAUSE OF ACTION OF ARNOLD ROSE

FORTY-SEVENTH: Denies each and every allegation contained in paragraph "65" of the complaint which is referred to in paragraph "65" of the complaint, except admits that a ticket providing for air passage by defendant from New York, New York to Athens, Greece and return therefrom to New York, New York was issued in the name of "Mr. A. Rose," and repeats and realleges each and every allegation, admission and denial made to the other paragraphs of the complaint which are referred to in paragraph "65" of the

Answer to the Complaint of Plaintiffs Spiridakis

complaint.

FORTY-EIGHTH: Denies each and every allegation contained in paragraph "66" of the complaint.

AS TO THE TWENTIETH CAUSE OF ACTION OF ARNOLD ROSE

FORTY-NINTH: Denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph "67" and "68" of the complaint.

FIFTIETH: Denies each and every allegation contained in paragraphs "69" and "70" of the complaint.

AS TO THE TWENTY-FIRST CAUSE OF ACTION OF HELEN ROSE

FIFTY-FIRST: Denies knowledge or information sufficient to form a belief as to the truth of the allegation contained in paragraph "71" of the complaint.

FIFTY-SECOND: Denies each and every allegation contained in paragraph "6" of the complaint which is referred to in paragraph "72" of the complaint, except admits that a ticket providing for air passage by defendant from New York, New York to Athens, Greece and return therefrom to New York, New York was issued in the name of "Mrs. A. Rose," and repeats and realleges each and every allegation, admission and denial made to the other paragraphs of the complaint which are referred to in paragraph "72" of the complaint.

FIFTY-THIRD: Denies each and every allegation contained in paragraph "73" and "74" of the complaint.

Answer to the Complaint of Plaintiffs Spiridakis

AS TO THE TWENTY-SECOND CAUSE OF ACTION
ON BEHALF OF PLAINTIFF HELEN ROSE

FIFTY-FOURTH: Denies each and every allegation contained in paragraph "6" of the complaint which is referred to in paragraph "75" of the complaint, except admits that a ticket providing for air passage by defendant from New York, New York to Athens, Greece and return therefrom to New York, New York was issued in the name of "Mrs. A. Rose," and repeats and realleges every allegation, admission and denial made to the other paragraphs of the complaint which are referred to in paragraph "75" of the complaint.

FIFTY-FIFTH: Denies each and every allegation contained in paragraph "76" of the complaint.

AS TO THE TWENTY-THIRD CAUSE OF
ACTION OF HELEN ROSE

FIFTY-SIXTH: Denies each and every allegation contained in paragraph "6" of the complaint which is referred to in paragraph "77" of the complaint, except admits that a ticket providing for air passage by defendant from New York, New York to Athens, Greece and return therefrom to New York, New York was issued in the name of "Mrs. A. Rose," and repeats and realleges each and every allegation, admission and denial made to the other paragraphs of the complaint which are referred to in paragraph "77" of the complaint.

FIFTY-SEVENTH: Denies each and every allegation contained in paragraph "78" of the complaint.

AS TO THE TWENTY-FOURTH CAUSE OF
ACTION OF HELEN ROSE

FIFTY-EIGHTH: Denies each and every allegation contained in paragraph "6" of the complaint which is referred

Answer to the Complaint of Plaintiffs Spiridakis

to paragraph "79" of the complaint, except admits that a ticket providing for air passage by defendant from New York, New York to Athens, Greece and return therefrom to New York, New York was issued in the name of "Mrs. A. Rose," and repeats and realleges every allegation, admission and denial made to the other paragraphs of the complaint which are referred to in paragraph "79" of the complaint.

FIFTY-NINTH: Denies each and every allegation contained in paragraph "80" of the complaint.

AS TO THE TWENTY-FIFTH CAUSE OF
ACTION OF HELEN ROSE

SIXTIETH: Denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraphs "61" and "82" of the complaint.

SIXTY-FIRST: Denies each and every allegation contained in paragraphs "83" and "84" of the complaint.

WHEREFORE, defendant, TWA, demands judgment dismissing the complaint together with costs and disbursements of this action.

CHADBOURNE, PARKE, WHITESIDE & WOLFF

By in (initials) C.R.
A Member of the Firm
Attorneys for Defendant TWA
30 Rockefeller Plaza
New York, New York 10020
(212) 541-5800

NOTICE OF MOTION

10-31-74

E

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

-----x
ARISTEDES A. DAY, THEODORA DAY and :
CONSTANTINE DAY, individually, and
ARISTEDES A. DAY and THEODORA DAY, :
as parents of CONSTANTINE DAY,

Plaintiffs, : NOTICE OF MOTION
-against- : FOR SUMMARY JUDGMENT
TRANS WORLD AIRLINES, INC., : 73 Civ. 4105 (C.L.B.)
Defendants. :
-----x

S I R S :

PLEASE TAKE NOTICE, that the undersigned will move
this Court at a Motion Term thereof to be held at Room 1105,
United States Court House, Foley Square, New York, New York on
the 12th day of November, 1974 at 9:30 o'clock in the forenoon
of that day, or as soon thereafter as counsel can be heard,
for an order pursuant to Rule 56 of the Federal Rules of
Civil Procedure directing the entry of summary judgment in
favor of plaintiff on the issue of liability alone on the
ground that there is no genuine issue of material fact and
that plaintiff is entitled to a judgment on the issue of

Notice of Motion

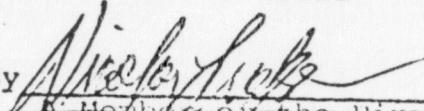
liability as a matter of law, and for such other and further relief as, to the Court may seem just and proper.

Dated: New York, New York
October 30, 1974

Yours, etc.,

ROGERS HOGE & HILLS

By


~~Michael Wolff~~
Attorneys for Plaintiffs
90 Park Avenue
New York, New York 10016

TO:

CHADBOURNE PARK WHITESIDE
& WOLFF
30 Rockefeller Plaza
New York, New York 10020

AFFIDAVIT OF PLAINTIFF ARISTEDES A. DAY

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

10-0-21

-----X
ARISTEDES A. DAY, THEODORA DAY and :
CONSTANTINE DAY, individually, and :
ARISTEDES A. DAY AND THEODORA DAY :
as parents of CONSTANTINE DAY, :

AFFIDAVIT

Plaintiffs, : Index No.
-against- : 73 Civ. 4105
TRANS WORLD AIRLINES, INC., : Judge Brieant
Defendant. :

-----X
STATE OF NEW YORK)
: ss.:
COUNTY OF NEW YORK)

ARISTEDES A. DAY, being duly sworn, deposes and
says that he is over the age of 21 years and is one of the
plaintiffs in the above captioned action.

1. Your deponent and his son Constantine are
residents of the City of Stamford, County of Fairfield and
State of Connecticut.

2. Sometime prior to August 1, 1973, your deponent
and his said son purchased round-trip tickets from the de-
fendant, Trans World Airlines, Inc., for a trip from New York,
New York to Athens, Greece, to New York, New York.

3. Your deponent and his son arrived in Greece
without incident and vacationed in said Republic during a

Affidavit of Plaintiff Aristedes A. Day

part of the summer of 1973.

4. Your deponent's and his son's return trip as evidenced by said tickets was scheduled for August 5, 1973, on defendant's flight #801, with approximate time of departure 15:30 hours, local time Athens, Greece.

5. On said date, in accordance with instructions of the defendant, your deponent and his son reported to the Helenikon Airport in Athens, Greece in advance of said estimated time of departure, and commenced the necessary and required procedures for boarding defendant's scheduled flight.

6. Your deponent and his son duly presented their tickets and passports to the appropriate Greek government authorities, as required, for all purposes of passport and custom inspection, which were duly conducted and concluded, and for such other requirements as might have been present.

7. Subsequent to said inspection, your deponent and his son were directed by agents or employees of defendant to a point where said agents or employees inspected, stamped and approved their tickets bearing thereon their names, were assigned seats, and were given and received boarding passes for said flight.

8. After the aforementioned processing of their tickets, your deponent and his son were further directed by agents or employees of defendant to an area reserved exclusively for ticket holding passengers of said scheduled flight.

Affidavit of Plaintiff Aristedes A. Day

9. No one other than ticket holding passengers who had their tickets already approved and accepted by the defendant was permitted nor allowed to enter said area except the agents or employees of defendant.

10. After entering said area your deponent, and his son were further directed by "ground hostesses" of the defendant to the proper and designated departure gate reserved for passengers to embark upon said flight.

11. Concurrently therewith, mechanical devices, including but not limited to public address systems under the control of the defendant, announced the said flight was then boarding at said gate.

12. That upon entering the area exclusively reserved for passengers embarking on defendant's airplane, your deponent sought the assistance of defendant's passenger relations agent so that your deponent, who was assigned a first class seat, and his son who was assigned a coach seat, could be seated together if possible.

13. That your deponent and his son were escorted and ushered by said passenger relations agent to the gate of embarkation and were instructed to proceed with said agent to board the airplane when the incident complained of herein occurred.

14. That at the time immediately preceding said incident, your deponent and his son were being personally

Affidavit of Plaintiff Aristedes A. Day

escorted, under the exclusive control, and were adhering to the direction of, said passenger relations agent when the incident complained of herein occurred.

15. That to your deponent's knowledge, there were no other functions to be performed by your deponent or his son prior to leaving said area and entering upon the runway or embarking upon the airplane itself other than the mere physical task of walking through the glass door partition and past a security guard separating said area from the runway at the Felinikon Airport.

16. That to your deponent's knowledge, several of his fellow passengers had left said area and were on the runway and had embarked upon ground transport vehicle for the purpose of being transported to the airplane or had actually boarded the airplane prior to the occurrence of the incident complained of herein.

17. At a time immediately preceding your deponent's and his son's exit on to the apron of the runway and the boarding of said ground transport vehicles or airplane, certain unknown and unspecified explosives were detonated in said area which was exclusively reserved for embarking passengers and in their immediate vicinity.

18. That as a result of said detonation of said explosives, your deponent and his son sustained severe personal injuries requiring their hospitalization and continued medical treatments.

Affidavit of Plaintiff Aristedes A. Day

19. That your deponent and his son did not in any way or by any means cause a detonation of said explosives and did not in any way or by any means willfully contribute to their injuries.

S/ ARISTEDES A. DAY

Sworn to before me this
15th day of October, 1974.

S/ Notary Public

NICOLAS LIAKAS
Notary Public State of New York
No. 41-2352163
Qualified in Queens County
Certificate filed in New York County
Commission Expires March 30, 1975

AFFIDAVIT OF GERALD STERN

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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ARISTEDES A. DAY, THEODORA DAY and:
CONSTANTINE DAY, individually, and
ARISTEDES A. DAY and THEODORA DAY,:
as parents of CONSTANTINE DAY,

Plaintiffs,

-against- : 73 Civ. 4103 C.L.B.

TRANS WORLD AIRLINES, INC., : AFFIDAVIT

Defendant.

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STATE OF NEW YORK)
: ss.:
COUNTY OF KINGS)

Dr. Gerald Stern, of One Hanson Place, Brooklyn,
New York, being duly sworn, deposes and says that:

1. He makes this affidavit in support of plaintiffs' motion for summary judgment herein.
2. During the summer of 1973, he was vacationing in the Republic of Greece, and was scheduled to depart therefrom on August 5, 1973 aboard defendant's flight scheduled to depart for Tel Aviv, Israel, at 3:30 p.m. Athens time.

3. At all times pertinent and relative to the incident complained of herein, your deponent was an eye-witness to the tragedy that befell the passengers of defendant's flight #381 bound for New York City and to some of the passengers of his flight. Your deponent's flight and

Affidavit of Gerald Stern

the aforesaid New York bound flight were both scheduled to depart at approximately 15:30 hours, local time.

4. Sufficiently in advance of such departure time, he reported to agents of the defendant for purposes of securing passage on his flight.

5. His passport and ticket were inspected and approved by the appropriate government authorities and permission was given to depart from Greece.

6. He was permitted entrance to an area exclusively reserved for passengers of international flights.

7. His ticket was duly presented to and accepted by agents of the defendant for embarkation and a seat assignment was made and a boarding pass issued to him.

8. Flight #881 was announced as boarding and passengers for the flight were requested to report to a specified location for boarding the aircraft.

9. The passengers for said flight formed a procession, a line, for their orderly embarkation.

10. Upon information and belief, the passengers forming such procession had completed all conditions precedent to entering the aircraft for their scheduled flight, except perhaps a momentary search of hand baggage for weapons.

11. At the precise moment that some passengers of flight #881 were crossing the portals leading to the runway, certain explosives were ignited and automatic weapons were fired causing injury to numerous passengers of flight #881.

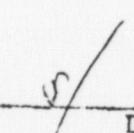
Affidavit of Gerald Stern

12. To your deponent's knowledge, several passengers of flight #831 had managed to exit from this area just prior to the aforesaid incident and had either boarded the aircraft or ground transport vehicles.

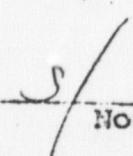
13. To your deponent's knowledge, the procession of passengers for flight #831 was proceeding at a reasonable pace, and those who were injured in this incident were those unfortunate enough still to have been on line.

14. Having satisfied all conditions precedent to the actual entry of the aircraft, your deponent and those on the aforesaid procession would have entered the aircraft had it not been for this incident, barring of course other unforeseen developments.

WHEREFORE, your deponent respectfully requests that the plaintiffs' motion for summary judgment on the issue of liability be granted along with such other and further relief as to this Court may seem just and proper.

 DR. GERALD STERN

Sworn to before me this
30th day of October, 1974.

 Notary Public

NICOLAS LIAKAS
Notary Public - New York
No. 41235210
Qualified in Queens County
Certified in New York County
Commission Expires March 30, 1975

AFFIDAVIT OF NICOLAS LIAKAS DATED OCTOBER 30, 1974

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

-----x
ARISTIDES A. DAY, THEODORA DAY and :
CONSTANTINE DAY, individually, and :
ARISTIDES A. DAY and THEODORA DAY, :
as parents of CONSTANTINE DAY, :
Plaintiffs, : ATTORNEY'S AFFIDAVIT
: IN SUPPORT OF MOTION
FOR SUMMARY JUDGMENT
-against- : 73 Civ. 4105
TRANS WORLD AIRLINES, INC., : (C.L.B.)
Defendant.
-----x

STATE OF NEW YORK)
: ss.:
COUNTY OF NEW YORK)

I, NICOLAS LIAKAS, being duly sworn, depose and
say:

1. I am associated with the firm of Rogers Hoge & Hills, attorneys for the plaintiffs herein, and I make this affidavit in support of their motion for summary judgment on the issue of liability.
2. This action was commenced by the filing of the complaint herein on or about the 25th day of September, 1973. An amended complaint was served on or about October 5, 1973 (a copy of which is annexed hereto as Exhibit "A"), and issue was joined on or about October 15, 1973 by the service of defendant's answer (a copy of which is annexed hereto as Exhibit "B").
3. Plaintiff's basic position in this action is that

Affidavit of Nicolas Liakas dated October 30, 1974

while in the course of embarking upon defendant's aircraft for the purpose of their international transport by air, plaintiffs were injured. It is asserted that regardless of fault, defendant is liable to the plaintiffs for their injuries as a result of the Warsaw Convention For the Unification of Certain Rules Relating to International Transportation By Air ("Warsaw") and the Montreal Agreement. Defendant has denied its liability.

4. The accompanying affidavits of Aristedes A. Day and Dr. Gerald Stern, sworn to the 30th day of October, 1974, fully set forth the pertinent facts herein. In addition, defendant's answers to plaintiffs' interrogatories and requests for admission do not dispute the facts. (Annexed hereto as Exhibits "C" and "D" respectively are copies of defendant's answers to plaintiffs' interrogatories and requests for admissions.)

5. A series of pre-trial conferences was concluded on July 10, 1974, at which time the Honorable Charles L. Brieant requested the parties to attempt to present to the Court stipulated facts and ordered the defendant to move for summary judgment on the issue of liability by no later than the end of October, 1974.

6. Pursuant to the Court's request, I wrote to the attorneys for the defendant on July 23, 1974. (A copy of said letter is annexed hereto as Exhibit "E"). In this letter, I presented a concise statement of the facts and in accordance with several conversations held with the attorneys for

Affidavit of Nicolas Liakas dated October 30, 1974

the defendant, I requested additional information which I believe to be relative to the issues of law presented herein.

7. Despite the Court's order, defendant has not responded to my correspondence and it appears that it is not prepared to adhere to the Court's instructions and directives, and it further appears that it has embarked upon an intentional effort to frustrate the prosecution of this action by refusing to diligently proceed.

8. Your deponent believes and asserts that the facts set forth below render the defendant liable for the plaintiffs' injuries and that as a matter of law, plaintiffs are entitled to summary judgment on the issue of liability. The facts, to date undisputed, are as follows:

- a. Defendant's flight #881 was scheduled to depart from Athens, Greece at approximately 1530 hours local time on August 5, 1973 with New York, New York as its destination;
- b. The plaintiffs herein were scheduled passengers of said flight and lawfully possessed tickets for said flight;
- c. In order to board said flight, plaintiffs duly reported to the Athens airport;
- d. The plaintiffs duly presented their tickets to agents of the defendant who stamped and approved same for boarding flight #881;
- e. The plaintiffs successfully completed and proceeded past customs, passport and

Affidavit of Nicolas Liakas dated October 30, 1974

- baggage inspectors;
- f. The plaintiffs were allowed entrance to an area reserved exclusively for ticket bearing passengers about to board international flights;
 - g. Defendant's flight #881 was thereafter announced as "boarding" and the plaintiffs were directed to proceed to a specified location in order to board and they had successfully done so;
 - h. At this time, the plaintiffs were under the exclusive control and custody of the defendant, and in fact, were being physically accompanied and escorted by agents of the defendant;
 - i. Several passengers of said flight had exited from the embarkation area before the incident complained of herein occurred;
 - j. Plaintiffs did not exit from such area solely because of their position in the procession of passengers;
 - k. While the plaintiffs were so in line and so proceeding for boarding, and after completing all conditions precedent to boarding other than a weapons search, they were injured due to the detonation

Affidavit of Nicolas Liakas dated October 30, 1974

of explosives.

9. The sole issue of law confronting this Court is whether the plaintiffs were injured "in the course of any of the operations of embarking".

10. In view of all the facts herein, a reasonable man must conclude that the injuries were sustained at the tail end of such operations, well beyond the first point from which the defendant would be liable for injuries to its passengers.

WHEREFORE, your deponent respectfully requests that the plaintiffs' motion for summary judgment on the issue of liability be granted in all respects, along with the costs and disbursements herein, and such other relief as to this Court may seem just and proper.

S/

Nicolas Liakas

Sworn to before me this
30th day of October, 1974.

S/

Notary Public

THERESA MOCCIA
Notary Public, State of New York
No. 02-7478100
Certified to Bronx County
Commissioned in New York County
Expiring August 30, 1976

AFFIDAVIT OF NICOLAS LIAKAS DATED NOVEMBER 28, 1974

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

ARISTIDEUS A. DAY, THEODORA DAY :
and CONSTANTINE DAY, individually,
and ARISTIDEUS A. DAY and THEODORA :
DAY, as parents of CONSTANTINE DAY,

Rec'd by [unclear]

Dec 2, 1974



JER

Plaintiffs,

AFFIDAVIT IN OPPOSITION
TO DEFENDANT'S CROSS-
MOTION FOR SUMMARY
JUDGMENT

-against-

TRANS WORLD AIRLINES, INC.,

73 Civ. 4105 (C.L.B.)

Defendants.

:

x

STATE OF NEW YORK)
: ss.
COUNTY OF NEW YORK)

I, NICOLAS LIAKAS, being duly sworn depose and say
that:

1. I am associated with the firm of Rogers Hoge &
Hills, attorneys for the plaintiffs, and I make this
affidavit in opposition to defendant's cross-motion for
summary judgment.

2. Upon information and belief, sometime during
the period of August 5, 1973 and August 27, 1973, John F.
Unright, manager, passenger security international, of
defendant Trans World Airlines, Inc. ("TWA") undertook an
investigation of the incident complained of herein and set
forth his findings and conclusions in a memorandum dated
August 27, 1973, a true copy of which is annexed hereto as
Exhibit A. The subject of that memorandum was "Terrorist
attack at Athens Airport August 5, 1973; injury and death of

Affidavit of Nicolas Liakas dated November 28, 1974

TWA passengers and injury to TWA employees; Arrest of perpetrators."

3. The memorandum begins with the following language:

"At about 1500 hours Athens local time August 5, 1973, 39 TWA passengers who had been previously checked in for Flight 801/5 to New York were in the transit lounge and lining up at Gate 4 for hand baggage check and physical searching by police immediately prior to boarding." [Emphasis added.]

4. This clearly, to begin with, constitutes an admission by the defendant that the process of embarking had already commenced.

5. At the top of page 2 of said memorandum, Mr. Enright makes the following statement:

"The terrorists used two Arab females, at first believed to be accessories and later found to be boarding passengers and not acquainted with the attackers, and various Arabic speaking airline employees as interpreters."

6. Once again, plaintiffs herein and those accompanying them were referred to as "boarding passengers". This once more constitutes an admission that the process of embarking had already commenced.

7. Mr. Enright continues that passengers normally traveling on TWA from Athens to New York, or any other international designation, check in in an area designated as the departure hall. They then proceed to a further check-point where their boarding pass and ticket is examined before entering the control area. After passing through the

Affidavit of Nicolas Liakas dated November 28, 1974

passport controls, passengers proceed into the transit/boarding lounge and they then proceed to an area designated as the transit desk where they obtain seat assignments. Passengers then await the boarding announcement for their flight and report to the gate area where they are then instructed to form separate lines for males and females for handbag searching and physical searching for weapons. After this search is completed they proceed out gate 4 and board the aircraft.

8. It is admitted by the defendant that the plaintiffs herein had completed all conditions precedent to the boarding of the aircraft but for the handbag and physical searching for weapons.

9. Mr. Enright confirms that at approximately 1500 hours local time the boarding announcement was made for flight 881. Specifically, the announcement was "boarding of Flight 881 to New York at Gate 4".

10. In view of all these facts, coupled with the facts stated in plaintiff's moving papers in its motion for summary judgment, one is compelled to conclude that the incident took place "in the course of any of the operations of embarking."

11. At the very least, sufficient issue of fact has been raised to deny defendant's cross-motion for summary judgment.

WHEREFORE, I respectfully request that an order be

Affidavit of Nicolas Liakas dated November 28, 1974

entered denying defendant's instant cross-motion and granting the plaintiff's motion for summary judgment on the issue of liability alone, or in the alternative, that a trial be ordered.

NICOLAS LIAKAS

Sworn to before me this
28th day of November, 1974

Notary Public

THESENE WAGGONER
Notary Public State of New York
No. 0000000000
Columbia County
Certificate issued at New York County
December twenty-first, nineteen hundred and sixty.

EXHIBIT A - Annexed to Affidavit of Nicolas Liakas

Exhibit A

Regional Vice President International 101 Champs Elysees Paris.	Manager - Passenger Security, Int'l., London.	R.W. Edwards R.R. Fletcher R.E. Nouman J.H. Steele C.F. Sykes
	August 27, 1973.	

SABOTAGE

Terrorist attack at Athens Airport
August 5th, 1973; Injury and death
of TWA passengers and injury to TWA
employees; Arrest of perpetrators.

Security File : 32-LIIR-22
Status : Active

SYNOPSIS

At about 1500 hours Athens local time August 5th, 1973 89 TWA passengers who had been previously checked in for Flight 881/5 to New York were in the transit lounge and lining up at Gate 4 for hand baggage check and physical searching by police immediately prior to boarding. Separate lines for males and females were being formed at two tables immediately in front of the two semi-permanent searching booths. At about 1510 hours, after approximately seven passengers had been screened and had passed through Gate 4 to busses parked on the ramp, three grenades were thrown in rapid succession and exploded in the immediate vicinity of the two lines of passengers and others waiting to join the lines. These explosions were followed by several shots from firearms. Approximately forty of the TWA passengers in the area were wounded by fragments of the exploding grenades and/or by bullets discharged from the firearms; two TWA passengers, one male and one female, died instantly from their wounds and one female TWA passenger died several days later. Four TWA employees assigned to the gate area were also wounded. One male passenger of another airline was also wounded and died instantly. The number of passengers and employees of other airlines who were injured was not determined and this information is still not available. After the initial explosions and shots, the two men who had apparently perpetrated the attack took up positions in the vicinity of a bar in a recessed area of the boarding

Continued/.....

EXHIBIT A - Annexed to Affidavit of Nicolas Liakas

Regional Vice President -
International.

August 27, 1973

lounge approximately 75 foot from the Gate 4 area. Each of the men was visibly armed with an automatic pistol and one man also displayed a grenade. Approximately 32 people, passengers and airport or airline employees, consisting of 12 who had retreated behind the bar and about 20 who were in front of the bar lying on the floor, were threatened by the men with the guns and the grenade and were held as hostages. For a period of approximately two hours the men negotiated with uniformed and plain clothes police who had taken up shielded positions around the lounge behind pillars and counters. The terrorists used two Arab females, at first believed to be accessories and later found to be boarding passengers and not acquainted with the attackers, and various Arabic speaking airline employees as interpreters. These people translated their shouted demands to the police. These demands were for an aircraft to take them from Athens to an Arab country and which, if not met, would result in the death of one or more of the hostages. At about 1720 hours they finally agreed to surrender to police after assurances from the Assistant Director of Police were received through an interpreter that they would not be shot. The men were taken from the terminal by police to headquarters in Athens where they were formally placed under arrest; they were subsequently charged with various crimes including manslaughter which under Greek law carries the death penalty.

All of the TWA employees that were injured have recovered. As of the date of this report all but two of the surviving passengers have returned to the United States and some of them are still undergoing medical treatment. One male passenger, 84 years of age, is still in a hospital in Athens and another male passenger, a U.S. serviceman, has been evacuated to a United States Airforce hospital in Germany.

DETAILS

This investigation was predicated upon information received by a telephone call to Paris Planning at 1555 hours local time, August 5th, 1973 as per their telex request L/L 051439 - August.

Continued/.....

EXHIBIT A - Annexed to Affidavit of Nicolas Liakas

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J. Charrelux informed the writer that he had received a telephone call at 1320 hours from TWA Captain TOOP, captain of originating Flight 881/5 August at the Athens Operations office who stated that there had just been a series of bomb explosions in the transit lounge of the airport which were believed to have been caused by two or more hand grenades and that some TWA passengers preparing to board Flight 881 and had been injured.

Passengers travelling on TWA from Athens Airport report to the check-in counter in the departure hall (see No. 1, diagram 'B'). They then proceed through a temporary check point (see No. 2, diagram 'B'), where their boarding pass and ticket is examined by the police before entering the passport control area. After passing through passport and currency control (see No. 3, diagram 'B' - photograph No. 1), they proceed down the stairs (see photograph No. 2) to the transit/boarding lounge (see No. 4, diagram 'B' - photograph No. 3). They then proceed to the transfer desk (see No. 5, diagram 'C') where they obtain seat assignments. Passengers then await the announcement for the boarding of the flight at which time they report to the gate area (usually Gate 4) where they are instructed to form separate lines for males and females for hand bag searching and physical searching by the police (see No. 6, diagram 'C' - photographs 5 and 6). After the search they proceed out of Gate 4 to the ramp where they board busses for transportation to the aircraft on the ramp (see No. 7, diagram 'C').

From interviews of the various TWA employees on duty on the day of occurrence, August 5th, 1973 (see list as per memo of August 14th of J.D. PSARELLIS, Manager Ground Services -Attachment 'A'), a composite sequence of events was established as follows:

At approximately 1455 hours local Athens time the boarding of Flight 840/4 (through Athens August 5th) to Tel Aviv had been completed with 121 joining passengers and 21 through passengers. Due to the late arrival of the inbound aircraft Flight 840 was in a "MULOP" with Flight 806/4 (through Athens

Continued/.....

EXHIBIT A - Annexed to Affidavit of Nicolas Liakas

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August 27, 1973

August 5th) to Tel Aviv and with originating Flight 881/5 to New York. The three aircraft for these flights at that time were parked on the ramp (see No. 19, diagram 'A').

Fifteen passengers were then boarded on Flight 806 including a party of 10 connecting passengers originally booked on Flight 840 who had arrived late and were being protected on Flight 806. At approximately 1500 hours the boarding announcement was made for Flight 881 by a TWA ground hostess at the transfer desk for "Boarding of TWA Flight 881 to New York at Gate 4". On hearing this announcement, the airport personnel, in another part of the building, electronically changed the sign board over Gate 4 from "TWA Flight 806 - Tel Aviv" to "TWA Flight 881 - New York". A few minutes later another TWA hostess who had been told that there were two transit passengers missing from Flight 806 came to the transfer desk and made an announcement, "Immodia" boarding of TWA Flight 806 to Tel Aviv at Gate 4". The airport personnel, apparently upon hearing this announcement, changed the sign over Gate 4 to read "TWA Flight 806 - Tel Aviv". About one minute after this announcement, and while some of the TWA personnel were questioning passengers for Flight 881 who were already lined up for hand bag checks, if any of them were Tel Aviv passengers - the first grenade exploded. TWA security guard PAPAZOGLOU (who was injured) was standing between the lines of female and male passengers with his back to the gate. He observed a male, dark complexion, apparently an Arab, standing near the elevators (see No. 8, diagram 'C') draw his hand back and throw something towards the group of passengers queuing up at the end of the searching tables. The object, which the guard now realizes was a grenade, went over his head and he believes exploded before it hit the floor behind him. Immediately a lot of passengers were either knocked to the floor or fell on the floor in fright or for protection. (See No. 20, diagram 'C' - photograph No. 17 of one female passenger where she fell between searching tables and transfer desk). The guard was also knocked down and later found he had been hit in the legs, side, stomach and head. The first explosion was followed almost immediately by two other

Continued/.....

EXHIBIT .. - Annexed to Affidavit of Nicolas Liakas

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August 27, 1973

explosions in the same immediate area. Small five inch craters in the marble floor and the burnt ceiling directly above disclose that the three grenades had exploded within an area of about 15 feet, all in the vicinity of the hand baggage searching tables at Gate 4 (see No. 9, diagram 'C' - photographs 7 and 8).

For a period of approximately 20 - 30 minutes there were sporadic shots described as automatic gunfire from the area of the recessed bar (see No. 10, diagram 'C' - photographs 9, 10, 11 and 12). From bullet hole marks discovered after the incident it appeared that some of these shots were fired from the same area of the elevators from which the first grenade was thrown. One shot penetrated the ladies searching booth and continued through the plate glass to the left of Gate 4 and two other shots penetrated the glass between Gates 4 and 5 (see No. 11 and No. 12, diagram 'C' - photographs 13 and 14). Other shots were evidently fired from the area of the bar and struck a post box near the point where the grenades exploded (see No. 13, diagram 'C') and also penetrated a telephone booth on the bar side of the main support column (see No. 14, diagram 'C'). Several shots also penetrated the windows on the upper mezzanine being the ramp (see No. 15 and No. 16, diagram 'C').

TWA Hostess E. ZAVALEN was standing at the left end of the recessed bar (see No. 17, diagram 'C') having a drink of water when the first grenade exploded somewhere behind her. When she turned, she heard another explosion and some shots and noted many people on the floor cut and bleeding and a great amount of smoke. She then saw a male, about 21 years old, dark complexion, apparently an Arab with a gun in his hand several feet from the bar in the direction of the souvenir counter (see No. 18, diagram 'C'). She then saw this man fire two or three shots at someone lying on the ground directly in front of him. She believes the person was a male as she can remember the individual was wearing trousers. (It is believed this was a male passenger of Austrian Airlines who died). Hostess Zavalen then ran around the bar through the open end. She was eventually joined on the floor behind the bar by eleven others including the

Continued/.....

EXHIBIT A - Annexed to Affidavit of Nicolas Liakas

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bar tender and a female cleaner working behind the bar. She later noticed a second male, also about 21 years of age and apparently an Arab at the other end of the bar; he also had a gun and later displayed a grenade.

During the following two hours the two Arab terrorists carried on shouted negotiations with members of the police who had taken up protective positions around the transit lounge. Some shots were reportedly fired by the police in the direction of the bar and struck the rear wall; apparently none of the attackers or hostages were struck by any of these shots. Arabic speaking airline employees were brought to the immediate area to translate the attackers demands which consisted mainly of repeated requests for an aircraft to take them to a friendly country. During the negotiations they also used two young females about 20 years of age, apparently Arab, to do some of the interpreting. The girls did this willingly and without appearing to be concerned or frightened. They stood near the bar and were not lying on the floor with the hostages. At that point the majority of persons in the vicinity believed these females were accomplices and part of the attackers team. (They were subsequently taken away by police for questioning but were found to be passengers boarding a flight to Benghazi).

Meanwhile, the attackers continued to threaten the hostages lying on the floor behind and in front of the bar with the two pistols and the grenade which was always prominently displayed. During this time they informed the hostages, in English, that if they did not receive what they had demanded within thirty minutes (an aeroplane to take them from Athens) they would be killed. At one point the telephone behind the bar started to ring and one of the attackers attempted to rip it from the wall knocking several liquor bottles from the shelf. Later one of the men asked TWA hostess Zavalon to call the police on this telephone and tell them that if they (the police) shot at them (the attackers) some hostages would be killed. The hostess did not know the direct number

Continued/.....

EXHIBIT A - Annexed to Affidavit of Nicolas Liakas

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for the police and the bar tender gave her the number of the upstairs bar. She dialled the number and a man answered in Greek and she gave him the message; the man assured her that he would pass the message to the police and "not to worry".

Shortly after the first series of explosions and shots, another TWA employee reports that, from the vicinity of the passport control area on the upper floor, she observed a man in Sabena coveralls, apparently an engineer or a mechanic, run through the transit lounge and scoop up an unexploded grenade on the floor near the transfer desk and run out of Gate 5 towards the bus ramp. Another TWA employee reports seeing this man leaving the terminal and run out on the ramp past a line of parked ramp vehicles and then throw the grenade into the dirt bank at the edge of the ramp a few hundred feet away from the gate area; there was a small explosion. Later information disclosed that apparently only the detonator had exploded and the body of the grenade was recovered intact.

During the two hour period of the attack and the continuous threatening of the hostages the three TWA flights were dispatched (see photostats of flight summaries - Attachments 'C' 'D' and 'E'). Piano side check of baggage which had been loaded on Flight 806 and then removed in connection with a check of a passenger apparently missing, disclosed three unclaimed bags with Tel Aviv bag tags, all sealed with special security tape. Two of those bags were subsequently identified as bags of two passengers who had travelled on Flight 810 that day from Paris to Tel Aviv but whose bags were erroneously placed on board Flight 806. The other bag was found to be one that had been checked by passenger R. STRUDE for Flight 806 that day. The passenger had passed through the security screening and was waiting in a bus at the ramp when the explosion occurred. He had then assisted some injured people out of the terminal area at which time he saw his family who were still outside the departure hall. When he attempted to return to the terminal to board the flight, the police had sealed off all entrances and would allow no one, including

Continued/.....

EXHIBIT A - Annex o Affidavit of Nicolas Liakas

Regional Vice President
International

August 27, 1973

employees, to enter the building. He then returned to the city with his family. Passenger Strubo departed on Flight 840 from Athens the following day.

It was decided that Flight 881 would be released with the seven passengers who were available and the flight actually left the blocks at 1730 hours local time. Prior to the actual departure all of the checked baggage had been removed from the aircraft and only the bags of the seven passengers which had been identified by them were re-loaded.

A detailed list of the 82 passengers who had checked in for the flight and were unable to depart on the flight due to the incident is attached (Attachment 'B'). The status as shown was as of the date of this report - August 27, 1973.

PERPETRATORS

The two perpetrators arrested were tentatively identified by the police as:

- 1) SHAFIK EL ARID, alias MOHAMED ZEHOD, 21 years of age, born in Jordan.
- 2) TALAAT KHANTOURAN, alias HUSSEIN TALAAT, 21 years of age, born in Jordan.

(See photograph No. 15).

Their identities and details of date and place of birth and nationality have not been positively established as of this date to the satisfaction of the Greek police.

Defendant Arid has been identified from newspaper photographs by TWA security guard as the man who threw the first grenade. This man has also been identified from newspaper photographs by TWA hostess E. Zavolea as the first man she saw after the explosion who had the gun in his hand and fired shots at the person lying on the floor. She identified defendant No. 2, Khantouran as the second Arab she observed after she had retreated to the rear of the bar.

Continued.....

EXHIBIT A - Annexed to Affidavit of Nicolas Liakas

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August 27, 1973

When the attackers surrendered and were arrested at the airport they had in their possession the following weapons:

One 9mm automatic 'Star' pistol - Spanish manufacture and 20 live 9mm cartridges.

One 7.65mm automatic 'Herstal' pistol - Belgian manufacture and 7 7.65mm live cartridges.

One live grenade, make unknown, believed to be Czechoslovakian or other eastern country manufacture (see photograph No. 6).

The other grenade recovered which was removed from the terminal by the Sabena employee was similar to the one recovered in possession of the attackers. The exploded grenades, from police examination of fragments, were believed to have been 'Mills' type 26-K-1, English manufacture.

When the prisoners were searched they had no airline tickets, no wallets, no passports and no identification. They made various statements as to what flight they had arrived on and how they had obtained the weapons, grenades and ammunition. Their original statement was that they had arrived from Benghazi via Libyan Airlines shortly before the attack. This statement was subsequently changed when a careful check of their clothing revealed a receipt for a purchase in the Athens terminal lounge on August 3rd, 1973 (Friday) two days before the incident. They then alleged that on that day, Friday August 3rd, 1973 they had arrived from Benghazi via Libyan Airlines, remained in the transit lounge for approximately 2½ hours observing the various boardings of TWA and other flights and then left via MEA for Beirut. On Sunday August 5th they left Beirut via SAS and arrived in Athens about 1030 a.m. They offered no details as to whether they were travelling with Beirut round trip tickets or whether they were supposed to connect at Athens to another flight for another country. They further alleged that, on arrival in Athens on Sunday

Continued/.....

EXHIBIT A - Annexed to Affidavit of Nicolas Liakas

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International

August 27, 1973

August 5th, by pre-arrangement, they met an accomplice in the men's room of the transit lounge and obtained the weapons, grenades and ammunition and gave the accomplice their tickets, passports and other identification. They would not identify the accomplice but would only state that he had arrived on another flight other than theirs and left by a different flight to another country. From current airline schedules it was determined that the flights the attackers could possibly have used as alleged were as follows:

Friday - Libyan Airlines Flight No. 150 - arrives from Benghazi at 1400 hours local; MEA Flight No. 252 departs from Athens for Beirut at 1630 local.

Sunday - SAS Flight 834 leaves Beirut at 0935 hours local and arrives at Athens at 1025 local. (This flight continues to Bucharest and Copenhagen).

At a meeting at police headquarters in Athens on August 10, 1973 the writer met with Assistant Director of Police, LOUKAS HRISTOLOUKAS who personally effected the actual surrender and arrest of the two men at the airport and is in charge of the overall investigation. At that time he was asked if the details of their actual tickets and travel had been definitely established. He stated that as the men had no tickets on their person when arrested this was not possible. He further stated that not only had they received no confirmation of their travel from the Arab Airlines involved, but that the police did not expect to receive any cooperation in this area. One of the Government ministers who attended the conference also commented that there had been an official denial by the Lebanese Government that the men had not flown from Beirut on the day of occurrence. The Director, Mr. Hristoloukas, also said he believed that identifying the alleged accomplice was practically impossible as there had been approximately 4500 passengers arriving and departing from Athens airport on the day of the occurrence.

Continued/.....

EXHIBIT A - Annexed to Affidavit of Nicolas Liakas

Regional Vice President
International

August 27, 1973

The writer suggested that local SAS officials be contacted to obtain what tickets had been uplifted on their Beirut/Athens flight on Sunday August 5th as alleged by the prisoners and if so, furnish the details of where and when they were purchased as these tickets, if located, might provide further information as to their planned onward travel. The police were also advised of the possibility that the tickets of another airline might have been used on the SAS flight in which case they would eventually be forwarded to the other airline on a direct billing or through the IATA interline billing process. Director Iristoloukas agreed to make further inquiries as to the tickets; the results, if any, of this phase of the investigation are unknown as of this date.

Various news media issued reports that the attackers were connecting at Athens to one of the TWA Tel Aviv bound flights; one report went so far as to state that the attackers were about to have their hand baggage searched as they were boarding a TWA flight and this precipitated the attack. A check of available records at the Athens Reservations by Athens CTO/Reservations Manager, N. STAVRIDIS, failed to disclose any booking for these men under their names above or similar Arab names.

In statements to the police during their interrogation and later publicly in court, the prisoners alleged they planned to attack "Israel Immigrant passengers on TWA flights going to Tel Aviv, but by mistake struck when the passengers were actually boarding the New York bound flight". They also claimed that they were members of the Black September Guerrilla organization and had instructions to carry out this attack. The prisoners have been charged with a total of six counts which include manslaughter, causing bodily injury, damaging foreign property and illegal possession of arms and explosives. They have been remanded to jail without bail; the details of the exact date of any formal hearing or trial are not known at this time but it is believed this will not take place until about November.

Continued/.....

EXHIBIT A - Annexed to Affidavit of Nicolas Liakas

Regional Vice President
International

August 27, 1973

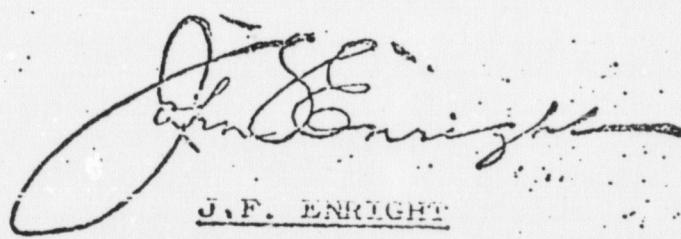
DOCUMENTATION

The Manager Customer Services, N. ZOUMBOULAKIS was instructed by the writer to retain the actual flight coupons of the three deceased passengers lifted at the time of check in for Flight 881/5 August; they are presently in the office of General Manager - Greece, Mr. C.F. SYKES. He was also instructed to prepare photostats of all of the lifted coupons of original passengers checked in for flight 881/5 August when they were able to depart on subsequent flights at which time the original coupons would be forwarded in the proper A-68 envelope. In accordance with later instructions received from Kansas City Insurance by telex message, the balance of the uplifted coupons of passengers who had not yet actually departed on that date were forwarded to Kansas City; photostats of these coupons were prepared and are being used for enclosing in the A-68 envelopes on subsequent flights used by the passengers.

All of the coupons of the 82 passengers who had checked in and did not travel on Flight 881/5 August have a circled reference number corresponding with reference numbers shown on the passenger list (Attachment 'B'). Mr. Zoumboulakis was also instructed to retain all flight files of August 5th beyond the usual retention period and until such time as they may be required for any civil or criminal action.

Similar instructions have been given to Mr. Stavridis to retain all reservations records for all flights of August 5th, arriving, departing or transiting Athens.

This file will remain active pending further investigation.



J.F. ENRIGHT

Manager - Passenger
Security, International.

NOTICE OF MOTION

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK



ARISTEDES A. DAY, THEODORA DAY and CONSTANTINE DAY, individually, and ARISTEDES A. DAY and THEODORA DAY, as parents of CONSTANTINE DAY,	:	
	:	
	:	NOTICE OF CROSS-
	:	MOTION FOR
	:	<u>SUMMARY JUDGMENT</u>
Plaintiffs,	:	
-against-	:	73 Civ. 4105
TRANS WORLD AIRLINES, INC.,	:	(CLB, Jr.)
Defendant.	:	FILED DEC 5 1974

By hand
Per WKB.

S I R S:

PLEASE TAKE NOTICE that upon the annexed affidavits of Costas Constas, sworn to the 14th day of November, 1974 Bruce W. Keihner, sworn to the 20th day of November, 1974 and Michael Riffaterre, sworn to the 19th day of November, 1974 and upon the annexed Statement of Facts, and upon all the pleadings and proceedings heretofore had herein, the undersigned will cross-move this Court before the Honorable Charles L. Brieft, Jr. on the 17
3rd day of December, 1974, at 9:30 o'clock in the forenoon of that day, or as soon thereafter as counsel may be heard, in the United States Courthouse, Foley Square, New York, New York, for an order pursuant to Rule 56 of the Federal Rules of Civil Procedure denying plaintiff's motion for partial summary judgment striking from the complaint the first cause of action based on the Warsaw Convention on the grounds that there is no issue as to any material fact and that the defendant is entitled to judgment as a matter

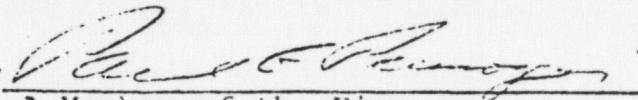
Notice of Motion

of law, and for such other and further relief as this Court
may deem just and proper.

Dated: New York, New York
November 20, 1974

Yours, etc.,

CHADBOURNE, PARKE, WHITESIDE & WOLFF

By 

A Member of the Firm
Attorneys for Defendant
30 Rockefeller Plaza
New York, New York 10020
(212) 541-5800

TO:

ROGERS HOGE & HILLS
Attorneys for Plaintiffs
90 Park Avenue
New York, New York 10016
(212) 953-9200

STATEMENT PURSUANT TO RULE 9(g) OF THE GENERAL RULES

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

----- x

ARISTEDES A. DAY, THEODORA DAY and CONSTANTINE DAY, individually, and ARISTEDES A. DAY and THEODORA DAY, as parents of CONSTANTINE DAY,	:	STATEMENT PURSUANT TO RULE 9(G) OF THE <u>GENERAL RULES</u>
Plaintiffs,	:	73 Civ. 4105 (CLB, Jr.)
-against-	:	
TRANS WORLD AIRLINES, INC.,	:	
Defendant.	:	

----- x

The following are material facts as to which defendant Trans World Airlines, Inc. ("TWA") contends there is no genuine issue to be tried:

1. The United States of America and Greece are signatories to the Warsaw Convention, more formally known as The Convention for The Unification of Certain Rules Relating to International Transportation by Air (49 Stat. 3000, T.S. No. 876 (1934)).

2. TWA is a signatory to the Montreal Agreement (Civil Aeronautics Board Agreement 18900, order Serial No. E-23680, May 13, 1966).

3. On August 5, 1973 TWA owned and operated an airplane which was scheduled to depart, as flight 881, from Athens, Greece to New York, New York at 1530 hours, Athens local time.

Statement Pursuant to Rule 9(g) of the General Rules

4. On August 5, 1973, prospective passengers for flight 881 were to await the flight in the Transit Lounge at The East Terminal Building of Hellenikon Airport, Athens, Greece.

5. Exhibits A-E attached to the affidavit of Costas Constanas accurately reflect the physical layout of the Transit Lounge and The East Terminal Building as of August 5, 1973 by way of diagrams and photographs.

6. Tickets for flight 881 on August 5, 1973 had been issued in the names of Mr. C. Day and Mr. A. Day.

7. On August 5, 1973, the plaintiffs entered the Departure Hall of the East Terminal Building depicted on Exhibit A and had their tickets checked by a TWA employee.

8. On August 5, 1973, the plaintiffs proceeded from TWA's check-in desk to an area on the upper level of the East Terminal Building, depicted in Exhibit A, where their boarding passes and tickets were checked by Greek authorities.

9. On August 5, 1973, the plaintiffs proceeded from the above mentioned area to Greek Passport and Currency Control, located on the upper level of the East Terminal Building, depicted in Exhibit A, where their

Statement Pursuant to Rule 9(g) of the General Rules

passports were examined and stamped by Greek officials.

10. On August 5, 1973, the plaintiffs herein proceeded from Greek Passport and Currency Control down a set of stairs into the Transit Lounge, depicted in Exhibits B and D-1.

11. On August 15, 1973, an announcement was made over a loud-speaker system that all persons awaiting flight 881 were to proceed to gate 4.

12. On August 5, 1973, gate 4 was located within the Transit Lounge, as depicted in Exhibits B and D-4.

13. On August 5, 1973, at gate 4 were located two tables for examination of hand luggage by Greek police.

14. On August 5, 1973, behind the tables at gate 4 were located two booths for the physical searching by Greek police of all persons intending to depart on flight 881.

15. On August 5, 1973, behind the booths in the area of gate 4 was a space, approximately 5 feet long, followed by two sets of double doors, as depicted in Exhibit B.

16. On August 5, 1973, the doors referred to in paragraph 15 were exit doors from the Transit Lounge.

Statement Pursuant to Rule 9(g) of the General Rules

17. On August 5, 1973, the doors referred to in paragraph 15 led to a raised terrace attached to the East Terminal Building, depicted in Exhibits B, E-1 and E-2.

18. On August 5, 1973, two sets of stairs were located on the east side of the terrace leading to a waiting area, depicted in Exhibits B and E-2.

19. On August 5, 1973, there was a bus at the waiting area referred to in paragraph 18.

20. On August 5, 1973, the bus referred to in paragraph 19 was owned and operated by Olympic Airlines and was to carry persons across the traffic apron, a distance of approximately 250 meters. (See Exhibit C).

21. On August 5, 1973, the airplane for flight 881 was parked out on the traffic apron depicted in Exhibit C.

22. On August 5, 1973, the bus referred to in paragraphs 19 and 20 was to have carried persons across the traffic apron to where the airplane for flight 881 was parked and was to have discharged them at this point. There prospective passengers would have descended from the bus, climbed the boarding ladder and entered the aircraft.

23. On August 5, 1973, plaintiffs proceeded to the vicinity of gate 4 and lined up in the Transit Lounge to prepare for proceeding through the hand baggage

Statement Pursuant to Rule 9(g) of the General Rules

and physical search to be conducted by Greek police.

24. On August 5, 1973, at approximately 1510 hours, Athens time, two armed terrorists threw hand grenades at and fired hand weapons at persons in the vicinity of gate 4, including plaintiffs.

25. On August 5, 1973, the hand grenades exploded in the vicinity of points 2 and 3 depicted on Exhibit B.

26. On August 5, 1973, none of the plaintiffs had reached gate 4 at the time of the incident.

27. On August 5, 1973, at the time of the incident, none of the plaintiffs had reached or proceeded through the hand baggage and physical search conducted by the Greek authorities.

28. On August 5, 1973, at the time of the incident, none of the plaintiffs herein had exited from the Transit Lounge.

Dated: New York, New York
November 20, 1974

CHADBOURNE, PARKE, WHITESIDE & WOLFF

By Jean F. Johnson
A Member of the Firm
Attorneys for Defendant TWA
30 Rockefeller Plaza
New York, New York 10020
(212) 541-5800

AFFIDAVIT OF COSTAS CONSTAS

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

----- x
ARISTEDES A. DAY, THEODOXA DAY :
and CONSTANTINE DAY, individually, and ARISTEDES A. DAY and :
THEODORA DAY, as parents of :
CONSTANTINE DAY, : AFFIDAVIT IN SUPPORT
Plaintiffs, : OF TWA'S CROSS-MOTION
-against- : AND IN OPPOSITION TO
TRANS WORLD AIRLINES, INC., : PLAINTIFFS' MOTION

Defendant. :

----- x
HELLENIC REPUBLIC)
: ss.:
DISTRICT OF ATTICA)

COSTAS CONSTAS, being duly sworn, deposes and
says:

1. I am Supervisor - Airport Ticket Office of defendant, Trans World Airlines, Inc. ("TWA") at Hellenikon Airport, Athens, Greece, and I submit this affidavit in support of TWA's cross-motion for partial summary judgment dismissing from the complaint the causes of action based on the Warsaw Convention as modified by the Montreal Agreement, and in opposition to plaintiffs' motion for summary judgment in the above-entitled action.

2. I am familiar with Hellenikon Airport, Athens, Greece, ("the Airport") as well as the Airport's East Terminal Building ("the Terminal Building"). The

Affidavit of Costas Constan

Airport including the Terminal Building is owned by the Greek Government and is under the sole management of the Greek Civil Aviation Department, an arm of the Greek government. I am also familiar with the route that prospective passengers take therein while waiting for flights departing from the Airport.

The Exhibits

3. Exhibit A, attached, is a diagram of the Terminal Building (to scale as indicated), showing both the upper and lower levels.

4. Exhibit B, attached, is a diagram of the Transit Lounge (to scale as indicated) on the lower level of the Terminal Building including the double exit doors leading to the south reflecting pool, the reflecting pool area, and stairs leading to the sidewalk and traffic apron.

5. Exhibit C, attached, is a diagram of the Terminal Building in relation to portions of the traffic apron, including the location of the plane for flight 881 on August 5, 1973.

6. Exhibit D, attached, consists of four photographs which fairly represent the Transit Lounge inside the Terminal Building as follows:

(D-1) The Transit Lounge including the steps coming down from the upper level of the Terminal Building;

(D-2) The Transfer Desk located in the Transit Lounge, together with the bar and

Affidavit of Costas Constas

duty free shops in the background;

- (D-3) The bar and duty free shops in the Transit Lounge;

- (D-4) The gate 4 area and passengers lined up in the Transit Lounge, in front of the gate, waiting to be physically searched in the booth by Greek authorities.

7. Exhibit E, attached, consists of four photographs which fairly represent the area outside of the Terminal Building as follows:

- (E-1) The south reflecting pool area outside the Terminal Building beyond gate 4, looking south;

- (E-2) The south reflecting pool area and the Terminal Building and the stairs leading down to the level of the traffic apron looking north;

- (E-3) The south reflecting pool area and a typical passenger bus carrying people from the Terminal Building across the traffic apron of the Airport to where the planes are parked, looking east;

- (E-4) The traffic apron taken from the reflecting pool area looking south, showing planes parked on the traffic

Affidavit of Costas Constas

apron, where passengers embark.

8. Exhibits A through E depict the areas as they existed on the day of the incident, August 5, 1973.

The Terrorist Attack

9. I was present during the sudden attack by two armed terrorists occurring inside the Transit Lounge of the Terminal Building on August 5, 1973.

10. At about 1500 hours, Athens local time, on August 5, 1973 eighty-nine prospective passengers for TWA Flight 881 to New York, along with prospective passengers of other airlines, were in the Transit Lounge of the Terminal Building. The Transit Lounge is used by prospective passengers of all 40 non-Greek scheduled airlines. Prospective passengers for flight 881 were lining up in the vicinity of gate 4 in preparation for a hand baggage check and physical searching at gate 4 by Greek police prior to their leaving the Terminal Building. (See #2 on Exhibit B).

11. At about 1510 hours on August 5, 1973, three grenades were thrown in rapid succession and exploded in the Transit Lounge in the immediate vicinity of the two lines of passengers waiting to be searched. These explosions were followed by several shots from firearms. (See #2 and #3 on Exhibit B).

12. All the explosions, and all the shots which followed, occurred inside the Transit Lounge of the Terminal Building.

Affidavit of Costas Constas

13. The Transit Lounge is used by persons waiting for flights on 40 different airlines. The attack in question resulted in injuries to not only prospective passengers and employees of TWA but also to prospective passengers of at least one other airline and to other employees inside the Terminal Building.

The Terminal Building

14. Upon entering the Terminal Building, a prospective passenger is in the departure hall. (See diagram at Exhibit A). This hall contains the sales, information, and check-in counters of all 40 foreign airlines with international flights out of the Airport. The hall is on the upper level of the Terminal Building, which has two levels. If a person does not already have a ticket he can purchase one at the sales counter. After purchase, or if the person already has a ticket, he proceeds to the check-in counters. There, he submits his ticket and his luggage and receives a boarding pass and baggage check. He must also pay the airport head tax for which he receives a receipt. From there, the prospective passenger proceeds through a check point administered by the Greek authorities and through Greek passport and currency control. After leaving passport and currency control he walks down a set of steps into the Transit Lounge.

Affidavit of Costas ConstasThe Transit Lounge

15. The Transit Lounge is a large room on the lower level of the Terminal Building where all persons scheduled to depart on international flights of the 40 scheduled carriers using the terminal wait for their flights to be called. (See diagram at Exhibit B, and photographs at Exhibit D-1 and D-2.) The Transit Lounge contains a bar and duty free shops, and persons waiting there are free to move about at their leisure, since the lounge is not partitioned into exclusive areas for any airline. (See photographs D-1, D-2 and D-3.)

16. While in the Transit Lounge the prospective passenger obtains a seat assignment for his flight at the transfer desk, which is also used by all 40 airlines. (See #1 on diagram at Exhibit B and photograph at Exhibit D-2.) When his flight is called, he proceeds to the vicinity of the appropriate gate, where males and females are separated into two lines (see #2 on diagram at Exhibit B and photograph at Exhibit D-4), and subjected to a thorough physical search of both the person and any hand luggage by the Greek authorities at the gate. (See #3 on diagram at Exhibit B and photograph at Exhibit D-4.) After being searched, the prospective passenger walks approximately 5 yards to the exit doors of the Transit Lounge. (See #4 on diagram at Exhibit B.) After passing through two sets of doors he emerges on a raised terrace with a reflecting pool. (See #5 on diagram at Exhibit B and photograph at

Affidavit of Costas Constas

Exhibit E-1.) He then walks across the terrace to a set of stairs and walks down the stairs onto a sidewalk and roadway which is on the same level as the traffic apron. (See #6 and #7 on diagram at Exhibit B and photograph at Exhibit E-3.) He boards an Olympic Airways bus which takes him to the area on the traffic apron where the plane is parked. (See #8 on diagram at Exhibit C and photographs at Exhibit E-3 and E-4.) Upon arrival at his plane, the prospective passenger leaves the bus, walks along the traffic apron to the boarding ladder of the plane and embarks.

17. The incident in question occurred entirely inside of the Terminal Building.

Costas Constas

Sworn to before me this
day of November, 1974.

Notary Public

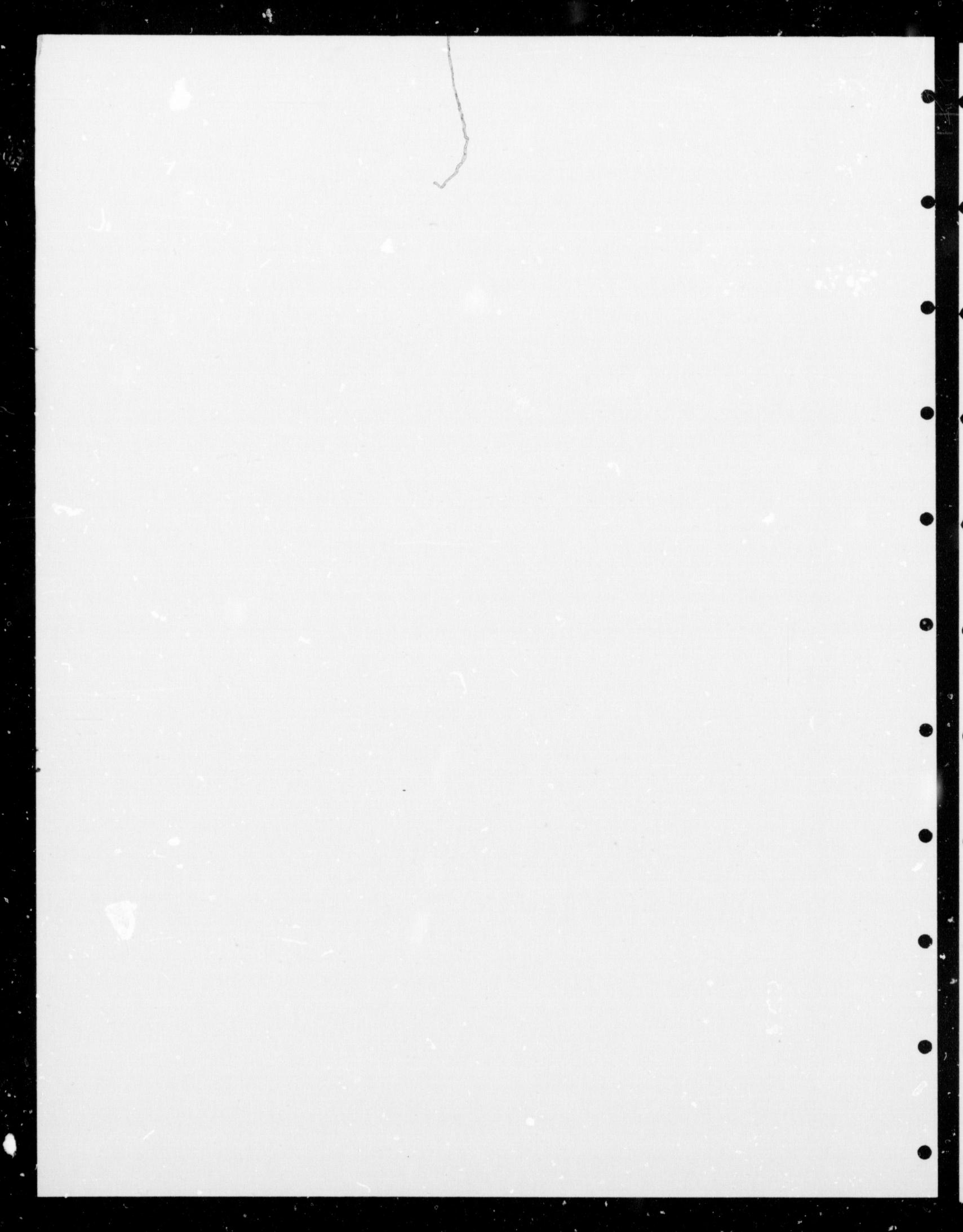
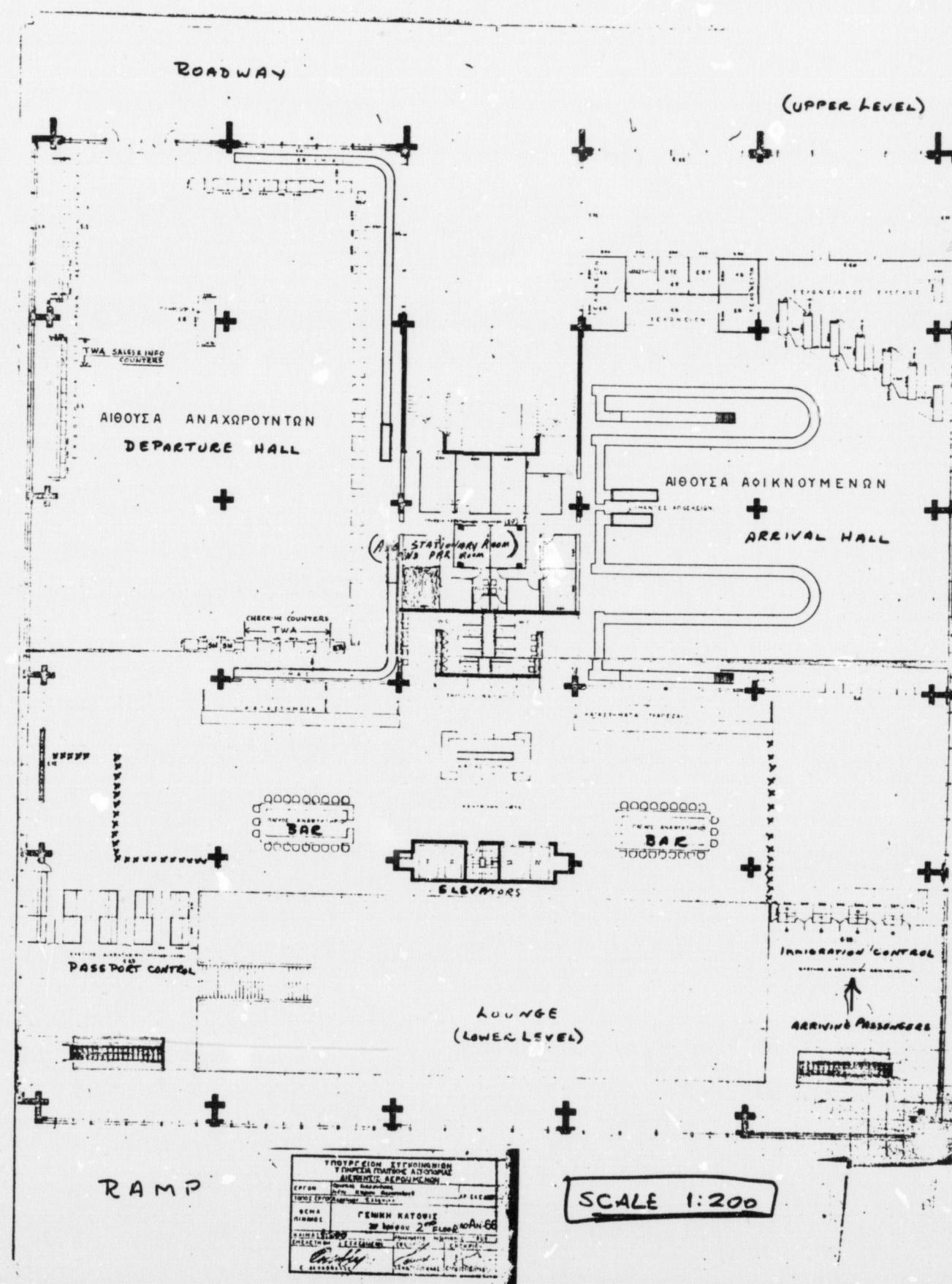
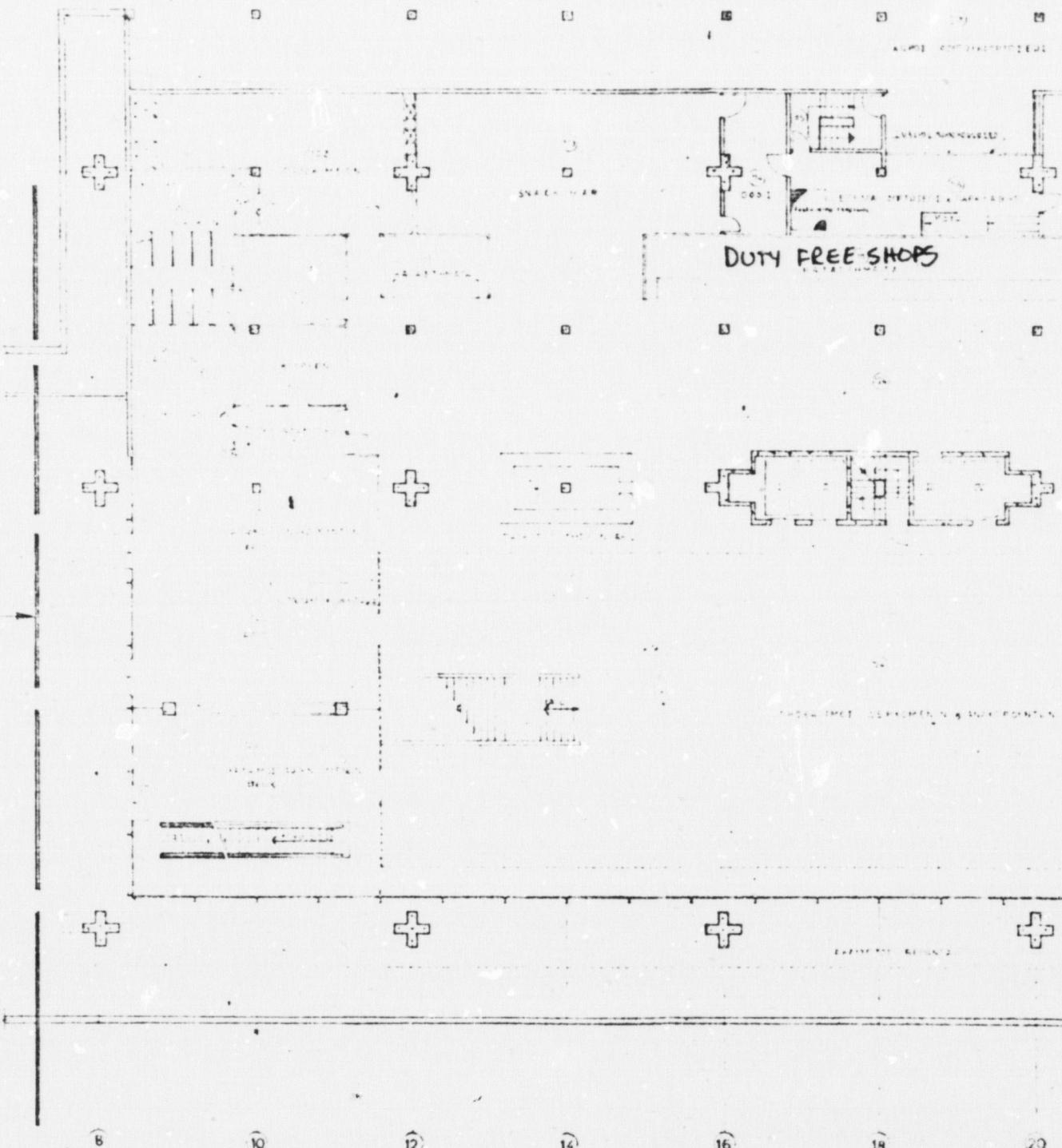


EXHIBIT A - Annexed to Affidavit of Costas Constas



IDENTICAL TO SOUTH POOL AREA

6)



TRANSIT LOUNGE

SCALE 1:200

A 87b

EXHIBIT B - Annexed to Affidavit

SCALE 1:200

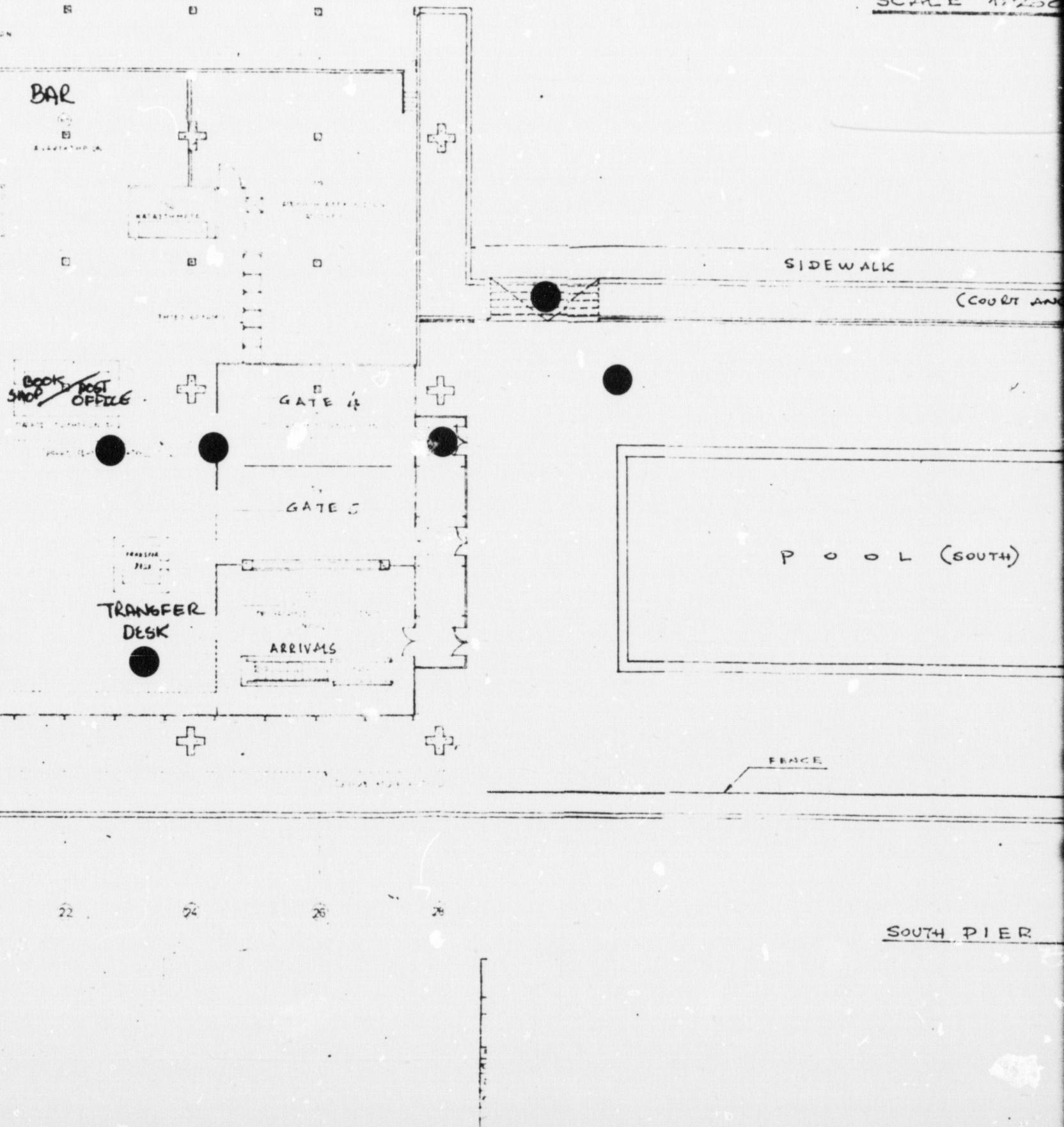


EXHIBIT B - Annexed to Affidavit of Costas Constas

SCALE 1:200

SIDEWALK

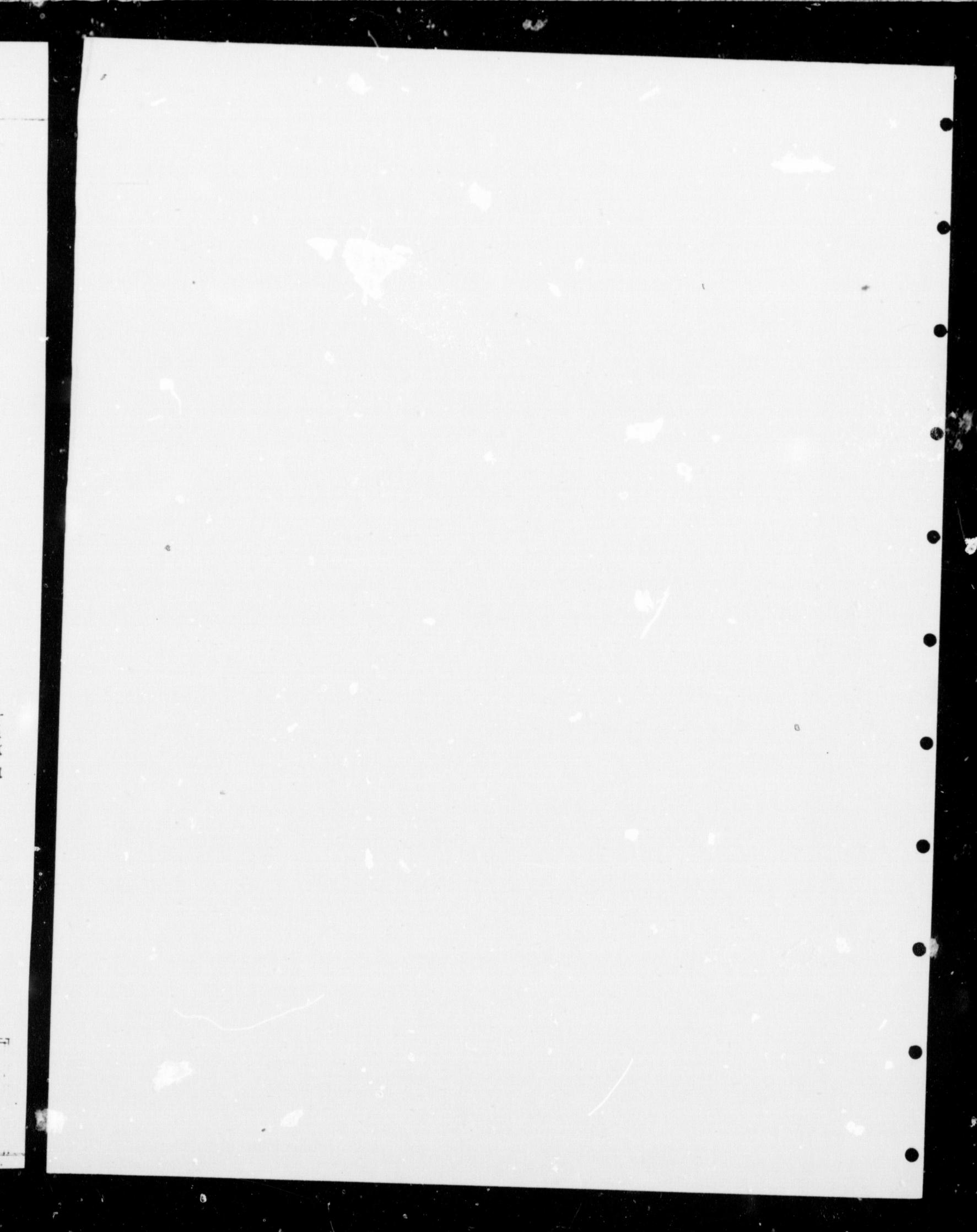
(COEUR ANGLAISE)

P O O L (SOUTH)

FENCE

SOUTH PIER

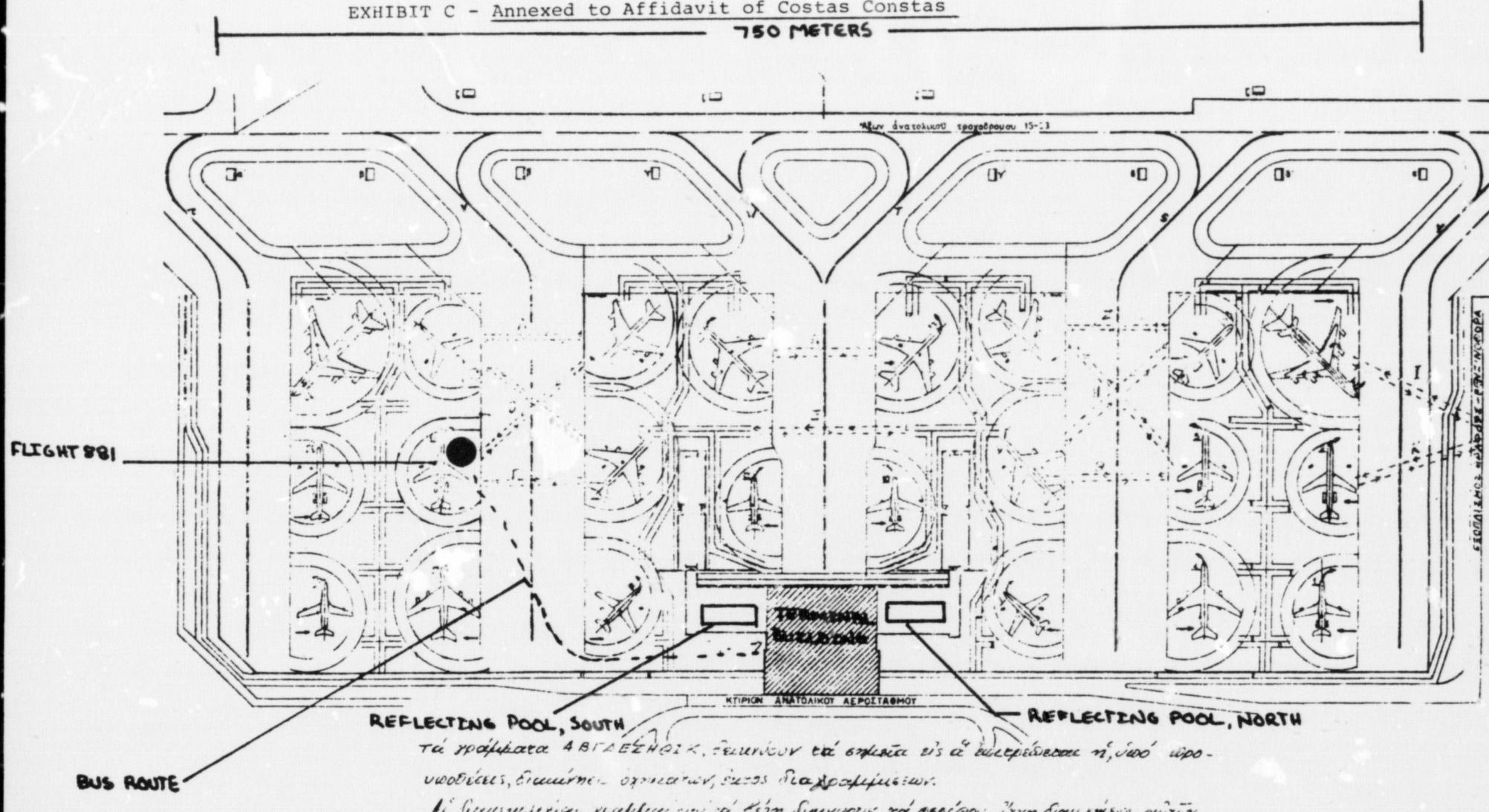
EXHIBIT B



A 87c

EXHIBIT C - Annexed to Affidavit of Costas Constas

750 METERS



REFLECTING POOL, SOUTH

τα μονάχα ΑΒΓΑΕΖΗΟΙΚ, τελευτής της αρχαίας είς αύξησιν της ιδιότητας, εμπλέκει, διατάσσει, διατάσσει, διατάσσει.

Λιγούμια περιήγησης για απλούστερη λήψη, διανομής της αρχαίας πόλης διατάσσεις αύριον.

EXHIBIT C

EXHIBIT D - Annexed to Affidavit of Costas Constas

D-1



The Transit Lounge

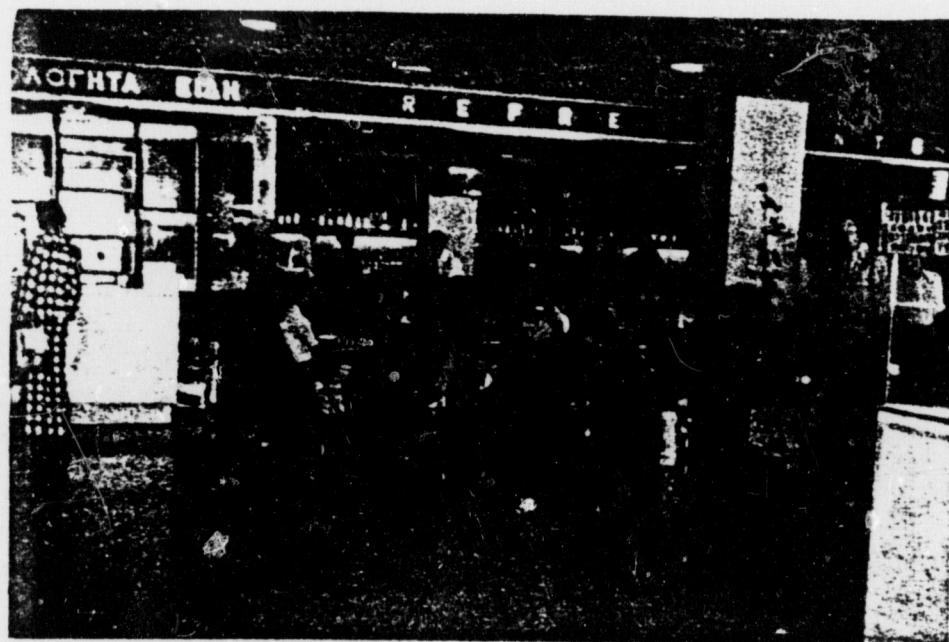
D-2



The Transfer Desk Inside The Transit Lounge

EXHIBIT D - Annexed to Affidavit of Costas Constas

D-3



The Bar and Duty Free Shops

D-4



The Gate 4 Area of the Transit Lounge

A 87f

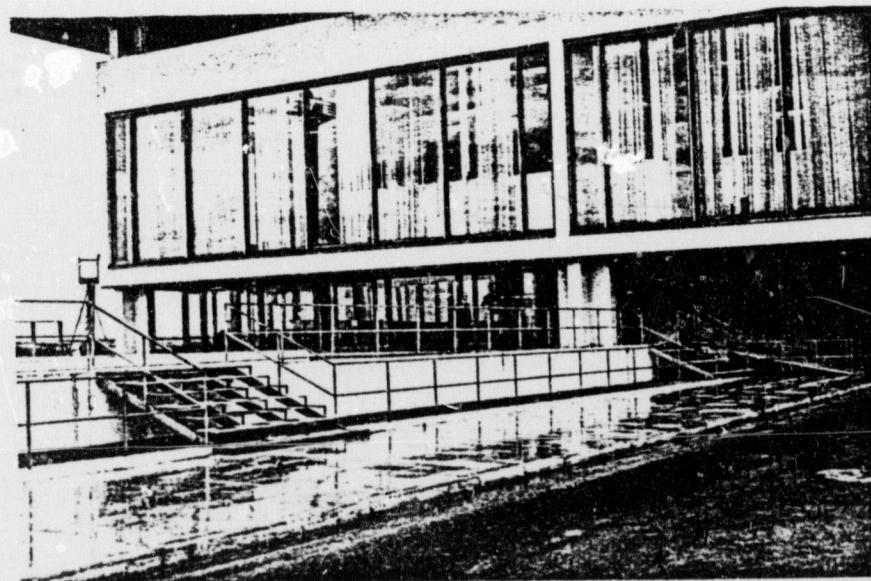
EXHIBIT E - Annexed to Affidavit of Costas Constas

E-1



The South Reflecting Pool Area
Outside the Terminal Building

E-2

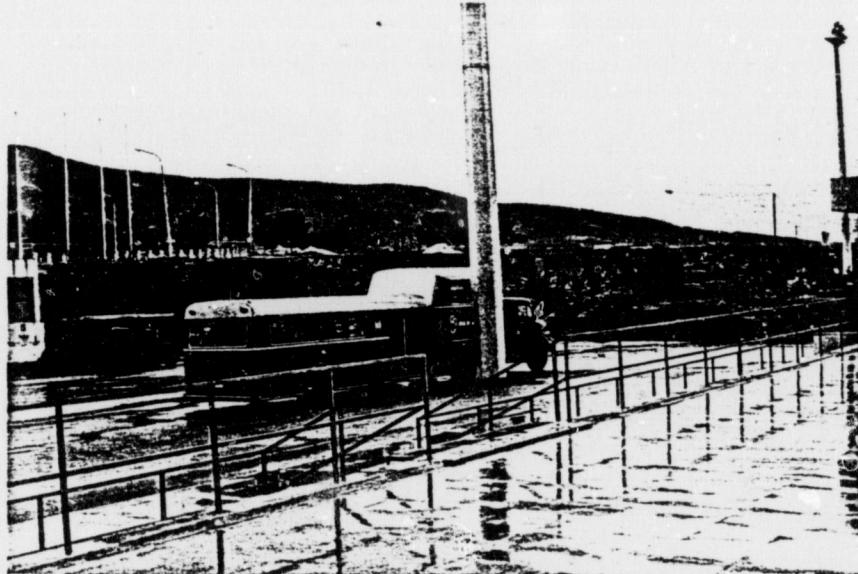


The South Reflecting Pool Area,
Stairs, Sidewalk and Roadway

A 87g

EXHIBIT E - Annexed to Affidavit of Costas Constas

E-3



South Reflecting Pool Area,
Stairs, and Passenger Bus

E-4



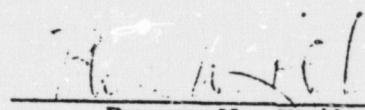
Traffic Apron and Parked Planes
Where Passengers Embark

EXHIBIT E

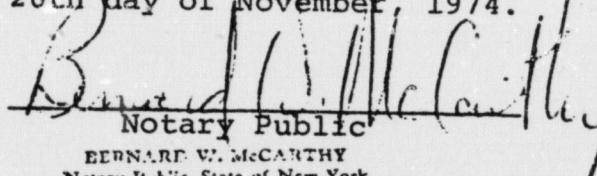


Affidavit of Bruce W. Keihner

plane door to the terminal proper, continued across the upper floor of the terminal and boarded a down escalator leading to a lower level of the terminal where Health and Immigration, baggage claim, and Customs are situated. It is important to note that during this entire period she was in an area which was segregated from the general public as well as from passengers from other flights. Only passengers walking from the same flight with Mrs. Felismina were in that area. Also, significantly, Mrs. Felismina at the time of her fall had not passed through the federal inspection area -- U.S. Health and immigration and U.S. Customs.


Bruce W. Keihner

Sworn to before me this
20th day of November, 1974.


Bernard W. McCarthy
Notary Public

BERNARD W. McCARTHY
Notary Public State of New York
No. 31-2601133 Qualified in New York County
Commission Expires March 30, 1975

A 89a

EXHIBIT A - Annexed to Affidavit of
Bruce W. Keihner

EXHIBIT A

E

Plaintiff - DECISION

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

-----x
DORILLA FELISMINA,

Plaintiff,

-against-

TRANS WORLD AIRLINES, INC.,

Defendant.



-----x
Defendant Trans World Airlines, Inc. ("TWA") moves for summary judgment pursuant to Rule 56, Fed. R. Civ. P., on the ground that the complaint is time-barred.

Plaintiff was a passenger aboard TWA Flight #901 from Lisbon, Portugal to JFK International Airport, New York. On September 4, 1970, upon arrival at New York, she left the aircraft, walked through an expandable, horizontal jetway which led from the airplane door to the terminal proper, continued across the upper floor of the terminal and boarded a "down escalator" leading to a lower level of the terminal where Health and Immigration, baggage claim, and Customs are situated.

While on the down escalator, plaintiff was allegedly pushed and fell, fracturing her right knee. This action, which was commenced on March 27, 1973, seeks damages resulting from the injury. TWA, relying on Article 29 of the Warsaw

EXHIBIT A - Annexed to Affidavit of
Bruce W. Keihner

Convention, which contains a two-year period of limitations in which to bring suit, moves for summary judgment dismissing the complaint as time-barred.

The question presented is whether this accident took place in the course of "disembarking" as that term is used in Article 17 of the Warsaw Convention and is therefore covered by the Convention. At oral argument, the parties agreed that this case is one of first impression.

This Court concludes that by the time plaintiff boarded the down escalator, she had disembarked from defendant's aircraft and that the two-year period of limitations contained in Article 29 of the Warsaw Convention is inapplicable. Accordingly, defendant's motion for summary judgment is denied.

It is so ordered.

Dated: June 26, 1974

Robert J. Zirndorff
U. S. D. J.

AFFIDAVIT OF MICHAEL RIFFATERRE

-----x
ARISTEDES A. DAY, THEODORA DAY :
and CONSTANTINE DAY, individually, and ARISTEDES A. DAY and :
THEODORA DAY, as parents of :
CONSTANTINE DAY, : 73 Civ. 4105
(CLB, Jr.)
Plaintiffs, :

-against- :
TRANS WORLD AIRLINES, INC., :
Defendant. :
-----x

STATE OF NEW YORK)
: ss.:
COUNTY OF NEW YORK)

MICHAEL RIFFATERRE, being duly sworn, deposes and
says:

1. I am a professor and Chairman of the Department of French and Romance Philology at Columbia University in the City of New York. I hold the equivalent of the American B.A. and M.A. degrees from the University of Paris, and I received the Doctor of Philosophy degree from Columbia University in 1955. I have been a member of the Columbia faculty since 1952 and Chairman of its Department of French and Romance Philology since 1973. I am currently Editor-in-Chief of Romanic Review, a scholarly journal dedicated to the study of all Romance languages and literatures.

2. At the request of counsel for TWA, I have examined the Memorandum of Law submitted by TWA in support

Affidavit of Michael Riffaterre

of its Cross-Motion for Summary Judgment, with particular regard to the English translations of the various French and Italian authorities cited therein. I have examined the original French and Italian text of these authorities, and I have duly compared said original texts with the English translation thereof. I hereby certify that said translations are true and correct and accurately set forth in English the meaning of said original texts.

3. I have also examined the original French texts of those portions of the Minutes of the Warsaw Convention and the proceedings of the Fifth International Congress on Air Navigation which are cited in or summarized in English in TWA's Memorandum of Law, and I have duly compared said original texts with the English translation or summary thereof. I hereby certify that said translations and summaries are true and correct and accurately set forth in English the meaning of said original texts.

Michael Riffaterre
Michael Riffaterre

Sworn to before me this 19th
day of November, 1974.

William L Bellotti
Notary Public

WILLIAM L. BELLOTTI
Notary Public, State of New York
No. 31-45031C8
Qualified in New York County
Commission Expires March 30, 1975

NOTICE OF MOTION

11-26-74



UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

KATE KERSEN, individually and as Plaintiff, : 74 Civ. 3355 (CLB)
Administrator and Administratrix Ad Prosequendum of the Estate of ELBERT KERSEN, deceased, : NOTICE OF MOTION
Plaintiff, : FOR PARTIAL SUMMARY
-against- : JUDGMENT ON THE ISSUE
TRANS WORLD AIRLINES, INC., : OF LIABILITY

Defendants.

S I R S :

PLEASE TAKE NOTICE, that upon the annexed affidavit of Alan J. Konigsberg, duly sworn to the 26th day of November, 1974, the affidavit of plaintiff duly sworn to the 21st day of November, 1974, the annexed exhibits and the accompanying Memorandum of Law, the undersigned will move this Court on the 6th day of December, 1974, at 9:30 o'clock of the forenoon of that day, or as soon thereafter as counsel may be heard for an Order pursuant to Rule 56(a) of the Federal Rules of Civil Procedure granting plaintiff summary judgment on the issue of liability on the plaintiff's Third and Fourth Claims for Relief, for damages not exceeding SEVENTY-FIVE THOUSAND (\$75,000) DOLLARS on each of the aforesaid claims and directing an immediate trial

Notice of Motion

on the issue of the amount of plaintiff's damage and for such other and further relief as to the Court may seem just and proper.

Dated: New York, New York
November 26, 1974

KREINDLER & KREINDLER
Attorneys for Plaintiff

TO: CHADBOURNE, PARKE,
WHITESIDE & WOLFF, ESQS.
Attorneys for Defendant
30 Rockefeller Plaza
New York, N.Y. 10020
(212) 541-5800

By: Nicole S. Seccoff
A Member of the Firm
99 Park Avenue
New York, N.Y. 10016
(212) 687-8181

STATEMENT PURSUANT TO RULE 9(g) OF THE GENERAL RULES

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

-----x

KATE KERSEN, individually and as Administratrix and Administratrix Ad Prosequendum of the Estate of ELBERT KERSEN, deceased, : 74 Civ. 3355 (CLB)

Plaintiff, : STATEMENT PURSUANT
: TO RULE 9(g) OF THE
: GENERAL RULES OF THE
: SOUTHERN DISTRICT
: OF NEW YORK

-against- :
TRANS WORLD AIRLINES, INC., :
Defendants. :
-----x

STATEMENT OF MATERIAL FACTS AS TO
WHICH PLAINTIFF CONTENDS THERE
IS NO GENUINE ISSUE TO BE TRIED

The following are the material facts as to which the plaintiff contends there is no genuine issue to be tried.

1. Defendant is a common carrier by air engaged in the business of transporting passengers for hire by aircraft between New York, New York and Athens, Greece.
2. On the 5th day of August, 1973, plaintiff Kate Kersen and Elbert Kersen, deceased, were fare-paying passengers pursuant to tickets which provided for transportation on defendant's flight 881 from Athens, Greece to New York, New York.
3. Flight 881 was to depart Athens Airport at 3:30 p.m. on August 5, 1973.
4. Prior to departure time, Mr. and Mrs. Kersen presented

Statement Pursuant to Rule 9(g) of the General Rules

their tickets and luggage to TWA's ticket agent on the upper level of the airport.

5. The agent removed the tickets from the envelope and gave plaintiff and her husband boarding passes with seat selections on them and baggage checks for their luggage.

6. Pursuant to the instructions of the TWA agent, plaintiff and her husband proceeded to and then through passport control on the upper level of the airport, and thereafter Mr. and Mrs. Kersen proceeded to the transit lounge on field level, level with the airport runways and the apron where the TWA plane was parked to receive the passengers.

7. Having passed through passport control, the Kersens were prohibited from leaving the transit lounge.

8. While Mr. and Mrs. Kersen were waiting in the transit lounge to board the aircraft, TWA announced that the passengers for flight 881 should proceed to gate 4 where they were to be personally searched and then were to proceed through the door of the transit lounge to the aircraft, a distance of approximately 100 yards.

9. At approximately 3:15 p.m., while plaintiff and her husband were at gate 4 standing in line to be searched, and just prior to walking out onto the field, several unknown terrorists attacked plaintiff and her husband.

10. At the time plaintiff and her husband were injured, they were passengers in international transportation as defined by the Warsaw Convention and the Montreal Agreement.

Statement Pursuant to Rule 9(g) of the General Rules

11. At the time plaintiff and her husband were injured, they were in the course of the operations of embarking on defendant's flight 881, under Article 17 of the Warsaw Convention.

Dated: New York, New York
November 26, 1974

KREINDLER & KREINDLER
Attorneys for Plaintiff

By: Milton Glucoff
A Member of the Firm
99 Park Avenue
New York, New York 10016
(212) 687-8181

AFFIDAVIT OF PLAINTIFF KATE KERSEN

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

-----x

KATE KERSEN, individually :
and as Administratrix and :
Administratrix Ad Prosequendum : 74 Civ. 3355 (CLB)
of the Estate of ELBERT KERSEN,
deceased, :
Plaintiff, : PLAINTIFF'S AFFIDAVIT IN
-against- : SUPPORT OF PLAINTIFF'S
TRANS WORLD AIRLINES, INC., : MOTION FOR SUMMARY
Defendant. : JUDGMENT ON THE ISSUE OF
LIABILIT

-----x

COUNTY OF UNION)
STATE OF NEW JERSEY) SS.:
)

KATE KERSEN, being duly sworn, deposes and says:

I am the plaintiff in the within action and as such, I
am fully familiar with the facts and circumstances hereinafter
set forth.

I am the widow of plaintiff's decedent, Elbert Kersen.
Prior to the commencement of this action, I was duly and properly
appointed Administratrix and Administratrix Ad Prosequendum of my
husband's estate by the Surrogate of the County of Union, New
Jersey, on September 24, 1973.

This affidavit is respectfully submitted in support of
the instant motion for summary judgment on the issue of liability.

Prior to August 5, 1973, my husband and I purchased
tickets on defendant's flight 881, which provided for air passage
by the defendant from Athens, Greece, to New York, New York.

Affidavit of Plaintiff Kate Kersen

The aircraft was scheduled to depart Athens Airport at 3:30 p.m. Prior to the scheduled departure time of the flight, my husband and I presented our tickets and checked in our luggage at the T.W.A. ticket counter on the upper level of the airport. The T.W.A. ticket agent removed our tickets from the ticket envelope, and kept the ticket coupons to flight 881. He also took our luggage and sent it on the way to the plane. The ticket agent gave my husband and me boarding passes with seat selections on them. He also gave to us our ticket coupon receipts (attached hereto as Exhibit "A"), and our baggage checks with the boarding passes. He then told us to go to a particular place to board the plane.

Thereafter, pursuant to the instructions of the T.W.A. ticket agent, my husband and I proceeded through passport control, which was also on the upper level of the airport. Our passports were then stamped by the personnel at the passport control counter. We then proceeded to the waiting room for international passengers, the "transit lounge", which was on the lower level of the airport. That room was on field level, that is, level with the airport runways and the apron where the plane would be parked to receive passengers. The T.W.A. plane which we were to board was parked immediately adjacent to the transit lounge room. To board the plane, we were to be personally searched in the transit lounge; we would then walk through the glass door of the gate of the transit lounge, continue outside for approximately one hundred yards and ascend the stairway to the plane. Thereafter, a T.W.A.

Affidavit of Plaintiff Kate Kersen

employee announced that all passengers for flight 881 were to proceed to board the aircraft through and at gate number 4.

At approximately 3:15 p.m., while my husband and I were standing in line to be searched at gate 4, several unknown Arab terrorists attacked my husband and me and the other persons in the waiting room with machine guns, rifles and hand grenades. In the course of the attack, several hand grenades were thrown and exploded. As a result of the said attack, my husband was killed and I sustained serious personal injuries.

At the time my husband was killed and I was injured, we were in the course of embarking on the T.W.A. plane. Our tickets and baggage had been accepted by T.W.A.; T.W.A. had assigned us seats and given us boarding passes; we followed T.W.A. instructions and proceeded to and passed through passport control; we were in the last place with other cleared passengers before ascending the plane itself; and moreover, we were prohibited from leaving the transit lounge to return to the common terminal areas because passport control had cleared us.

WHEREFORE, your deponent respectfully requests that plaintiff's motion for summary judgment on the issue of liability be granted in all respects; specifically, that this Court enter an order granting plaintiff's motion for summary judgment on the issue of defendant, Trans World Airlines, Inc.'s, liability, and

Affidavit of Plaintiff Kate Kersen

ordering an immediate trial on the issue of damages and for such other and further relief as to this Court may seem just and proper.

MAX SEROTA
NOTARY PUBLIC OF NEW JERSEY
My Commission Expires February 10, 1974

Kate Kersen
KATE KERSEN

Sworn to before me this

21st day of Nov., 1974.

Max Serota
Notary Public

AFFIDAVIT OF ALAN J. KONIGSBERG

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

-----x

KATE KERSEN, individually and as Plaintiff, : 74 Civ. 3355 (CLB)
Administratrix and Administratrix Ad Prosequendum of the Estate of ELBERT Plaintiff, :
KERSEN, deceased, :

-against- : ATTORNEY'S AFFIDAVIT
TRANS WORLD AIRLINES, INC., : IN SUPPORT OF
Defendant. : PLAINTIFF'S MOTION
: FOR SUMMARY JUDGMENT
: ON THE ISSUE OF
: LIABILITY

-----x

COUNTY OF NEW YORK)
STATE OF NEW YORK) SS.:
)

Alan J. Konigsberg, being duly sworn, deposes and says:

I am an attorney associated with the firm of KREINDLER & KREINDLER, attorney for the plaintiff, and as such I am fully familiar with the facts and circumstances hereinafter set forth.

This affidavit is respectfully submitted in support of plaintiff's instant motion for summary judgment on the issue of liability as to plaintiff's Third and Fourth Claims for Relief. This affidavit sets forth no new facts but is submitted to relate the undisputed facts to the applicable law and to set forth the grounds for the instant motion.

Plaintiff's motion seeks to have this Court rule, as a matter of law, that defendant, Trans World Airlines. Inc. (TWA), is liable to the plaintiff on her Third and Fourth Claims for Relief in amounts not exceeding \$75,000 per claim on the basis

Affidavit of Alan J. Konigsberg

of defendant's liability up to this limit under the Warsaw Convention as modified by the defendant's special contract pursuant to Article 22(1) of the Convention known as the Montreal Agreement attached hereto as Exhibit "B".

This is an action to recover damages for the wrongful death and conscious pain and suffering of plaintiff's decedent, Elbert Kersen and for personal injuries, mental anguish and other resultant damages sustained by plaintiff, his wife, at the Athens Airport, Athens, Greece, on August 5, 1973.

During August 1973, plaintiff and her husband, plaintiff's decedent, were vacationing in Greece. They had purchased tickets (Exhibit "A") for a return flight to New York on TWA's flight 881 on August 5, 1973. Said flight was scheduled to depart Athens Airport at approximately 3:30 p.m.

Prior to the scheduled departure time, plaintiff and her husband presented their tickets and luggage to TWA's ticket agent on the upper level of the airport. The agent removed the tickets from the envelope, gave plaintiff and her husband boarding passes with seat selections on them and baggage checks for the luggage. He then directed plaintiff and her husband to the waiting room for international passengers, the transit lounge which was on the lower level of the airport. Plaintiff and her husband proceeded through passport control on the upper level of the airport where their passports were stamped. They then proceeded to the transit lounge on field level, level with the airport runways and the apron where the plane was parked to

Affidavit of Alan J. Konigsberg

receive the passengers.

While they were waiting in the transit lounge to board the aircraft, TWA announced that the passengers for flight 881 should proceed to gate 4 to be searched and to board the aircraft.

To board the plane, plaintiff and her husband were to be personally searched and then were to proceed through the door of the transit lounge for a distance of approximately 100 yards to the aircraft. At approximately 3:15 p.m., while plaintiff and her husband were at gate 4, standing in line to be searched and just prior to walking out onto the field, several unknown Arab terrorists attacked persons in the waiting room including plaintiff and plaintiff's decedent with rifles, machine guns and hand grenades. As a result of the attack plaintiff's decedent was killed and plaintiff sustained serious personal injuries.

Clearly, at the time plaintiff was injured and plaintiff's decedent was killed, they were in the course of embarking on the TWA aircraft.

As more fully set forth in plaintiff's annexed Memorandum of Law, plaintiff's Third and Fourth Claims for Relief which are the basis of this motion are governed by an international treaty, the Convention for Unification of Certain Rules Relating to International Transportation By Air, commonly referred to as the Warsaw Convention, 49 Stat. 3000 et seq., as modified by the Montreal Agreement, (Exhibit "B"), a special contract and agreement filed by defendant with the Civil Aeronautics Board which incorporates the provisions of the agreement CAB 18,900.

Affidavit of Alan J. Konigsberg

The liability of TWA is established by Article 17 of the Warsaw Convention which is incorporated by the Montreal Agreement and which provides:

"the carrier shall be liable for damages sustained in the event of the death of any passenger or any other bodily injury suffered by a passenger if the accident which caused the damages so sustained took place on board the aircraft or in the course of any of the operations of embarking or disembarking." (Emphasis added).

defendant has waived all defenses to its liability in the aforementioned Montreal Agreement (Exhibit "B") except that of contributory negligence under Article 21 of the Warsaw Convention. Pursuant to the Montreal Agreement, the carrier agreed that as to all international transportation by the carrier which, according to the contract of carriage, includes a point in the United States of America as a point of origin, a point of destination, or agreed stopping place:

"(1) The limit of liability for each passenger for death, wounding or other bodily injuries shall be the sum of U.S. \$75,000 inclusive of legal fees and costs. . ."

The clear language of the special contract modifies the provisions of the Warsaw Convention to increase defendant's limit of liability to \$75,000 on each plaintiff's Third and Fourth Claims for Relief.

In paragraphs 5 and 17 of the Complaint, plaintiff alleges that she sustained injuries and that plaintiff's decedent was killed in the course of the operations of embarking on defendant's flight 881. These allegations are fully supported by the facts of this case.

Affidavit of Alan J. Konigsberg

Furthermore, based upon the undisputed facts set forth in the affidavit of the plaintiff, plaintiff and her husband were injured as a matter of law "in the course of embarking operations" under Article 17 of the Warsaw Convention when they were injured: Their tickets and baggage had been accepted by TWA. TWA had assigned them seats and given them boarding passes; the Kersens had followed TWA instructions and having passed through passport control and proceeded to gate 4 to be searched and to ascend the stairs to the airplane. They were in the last place with the other cleared passengers before ascending the plane itself. Moreover, they were prevented from leaving the transit lounge to return to the common terminal areas because they had been cleared previously by passport control.

Therefore, plaintiff respectfully submits that this Court should rule, as a matter of law, that defendant is liable to plaintiff herein on her Third and Fourth Claims for Relief up to the sum of \$75,000 on each said claim.

WHEREFORE, your deponent respectfully requests that this Court grant plaintiff's instant motion in all respects and enter an Order setting a trial for a date certain to assess plaintiff's actual provable damages.

ALAN J. KONIGSBERG

Sworn to before me this
26th day of November, 1974.

Milton G. Sincoff
Notary Public

MILTON G. SINCOFF
Notary Public, State of New York
No. 60-9020525
Qualified in Westchester County
Commission Expires March 30, 1976



EXHIBIT B - Annexed to Affidavit of
Alan J. Konigsberg

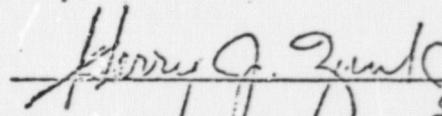
CIVIL AERONAUTICS BOARD

CERTIFICATION

REBY CERTIFY that the annexed is a true copy of the
counterpart to CAB 15900 executed by Trans World Airlines, Inc.

on
in this Board.

IN WITNESS WHEREOF, I have hereunto sub-
scribed my name, and caused the seal
of the Civil Aeronautics Board to be
affixed this 15th day of February
one thousand nine hundred and seventy.


Harry A. Zunk
Secretary
CIVIL AERONAUTICS BOARD

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federal Aviation Act (49 U.S.C. 1334(d)) provides in pertinent part that "[p]ublication, purporting to be
be competent evidence of the orders, decisions, rules, regulations, and reports of the Board—in all
federal—without further proof or authentication thereof"; Section 701(e) (49 U.S.C. 1441(e)) provides
ports of the Board relating to any accident or the investigation thereof, shall be admitted in evidence
or damages growing out of any matter mentioned in such report or reports"; and Section 1103 (49 U.S.C.
and reports filed with the Board shall be preserved as public records in the custody of the Secretary
as prima facie evidence of what they purport to be—in all judicial proceedings"; and that "expres-
sions "certified by the Secretary of the Board, under the seal of the Board, shall be received in
originals."

EXHIBIT B - Annexed to Affidavit of
Alan J. Konigsberg

AGREEMENT

The undersigned carriers (hereinafter referred to as "the Carriers")
hereby agree as follows:

1. Each of the Carriers shall, effective May 16, 1966, include the following in its conditions of carriage, including tariffs embodying conditions of carriage filed by it with any government.

"The Carrier shall avail itself of the limitation of liability provided in the Convention for the unification of certain rules relating to international carriage by air signed at Warsaw October 12th, 1929, or provided in the said Convention as amended by the Protocol signed at The Hague September 28th, 1955."

However, in accordance with Article 22(1) of said Convention, or said Convention as amended by said Protocol, the Carrier agrees that, as to all international transportation by the Carrier as defined in the said Convention, or said Convention as amended by said Protocol, which according to the contract of carriage includes a point in the United States of America as a point of origin, point of destination, or agreed stopping place

- (1) The limit of liability for each passenger for death, wounding, or other bodily injury shall be the sum of U.S. \$75,000 inclusive of legal fees and costs except that, in case of a claim brought in a state where provision is made for separate award of legal fees and costs, the limit shall be the sum of U.S. \$55,000 exclusive of legal fees and costs.
- (2) The Carrier shall not, with respect to any claim arising out of the death, wounding, or other bodily injury of a passenger, avail itself of any defense under Article 20(1) of said Convention or said Convention as amended by said Protocol.

EXHIBIT B - Annexed to Affidavit of
Alan J. Konigsberg

shall be deemed to affect the rights and liabilities of the Carrier with regard to any claim brought by, on behalf of, or in respect of a person who has wilfully caused damage which resulted in death, wounding, or other bodily injury of a passenger.

2. Each Carrier shall, at the time of delivery of the ticket, furnish to each passenger whose transportation is governed by the Convention or the Convention as amended by the Hague Protocol and by the special contract described in Paragraph 1, the following notice, which shall be printed in type as least as large as 10 point modern type and in ink contrasting with the stock on (i) each ticket, (ii) the piece of paper either placed in the ticket envelope with the ticket or attached to the ticket, or (iii) on the ticket envelope:

"Passenger on a journey involving an ultimate destination or a stop in a country other than the country of origin are advised that the provisions of a treaty known as the Warsaw Convention may be applicable to the entire journey, including any portion entirely within the country of origin or destination. For such passengers on a journey to, from, or with an agreed stopping place in the United States of America, the Convention and special contracts of carriage embodied in applicable tariffs provide that the liability of (Name of Carrier)* and (certain other carriers)* parties to such special contracts, for death of or personal injury to passengers is limited in most cases to proven damages not to exceed U.S. \$75,000 per passenger, and that this liability up to such limit shall not depend on negligence on the part of the Carrier. For such passengers traveling by a carrier not a party to such special contracts or on a journey not to, from, or having an agreed stopping place in the United States of America, liability of the carrier for death or personal injury to passengers is limited in most cases to approximately U.S. \$8,290 or U.S. \$16,580.

The names of Carriers parties to such special contracts are available at all ticket offices of such Carriers and may be examined on request.

* See 2A.

EXHIBIT B - Annexed to Affidavit of
Alan J. Konigsberg

"... protection can usually be obtained by purchasing insurance from a private company. Such insurance is not affected by any limitation of the Carrier's liability under the Warsaw Convention or such special contracts of carriage. For further information please consult your airline or insurance company representative."

2A. The expression (Name of Carrier) and (certain other carriers) may be replaced by the expression "Certain Carriers" in above notice.

3. This Agreement shall be filed with the Civil Aeronautics Board of the United States for approval pursuant to Section 412 of the Federal Aviation Act of 1958, as amended, and filed with other governments as required. The Agreement shall become effective upon approval by said Board pursuant to said Section 412.

4. This Agreement may be signed in any number of counterparts all of which shall constitute one Agreement. Any carrier engaged in carriage to which the Warsaw Convention or the Warsaw Convention as amended by the Hague Protocol applies may become a party to this Agreement by signing a counterpart hereof and depositing it with said Civil Aeronautics Board.

5. Any Carrier party hereto may withdraw from this Agreement by giving twelve (12) months' written notice of withdrawal to said Civil Aeronautics Board and the other Carriers parties to the Agreement.

TRANS WORLD AIRLINES, INC.

By Mr. J. H. Smith
Vice President and
General Counsel

STIPULATION

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

US District Court
Filed
Jan 22, 1975
SDNY

----- x FILED JAN 17 1975

JOHN SPIRIDAKIS, BESSIE SPIRIDAKIS,
LEONARD LAZARUS, SHIRLEY LAZARUS,
ARNOLD ROSE and HELEN ROSE,

By Helen
Per C.L.B., Jr.

Plaintiffs, : STIPULATION *checkmark*

-against- : 74 Civ. 4191 E
(C.L.B., Jr.)

TRANS WORLD AIRLINES, INC., :

Defendant. :

----- x

IT IS HEREBY STIPULATED AND AGREED AS FOLLOWS:

1. Plaintiffs hereby move for summary judgment and oppose defendants' motion for summary judgment on the papers and memoranda filed and submitted to this Court in Day v. Trans World Airlines, Inc., 73 Civ. 4105 and Kersen v. Trans World Airlines, Inc., 74 Civ. 3355;

2. Defendant hereby moves for summary judgment and opposes plaintiffs' motion for summary judgment on the papers and memoranda filed and submitted to this Court in the two aforementioned actions;

3. The facts as contained in the papers filed and submitted in the Day and Kersen actions are the same as those in this action with the following exception. Plaintiffs' counsel has represented and, for the purposes of this motion defendant's counsel have agreed that, at the time of the incident, plaintiff, Helen Rose, had passed through the baggage and bodily search area adminis-

Stipulation

tered by Greek police and was situated in the area between the searching booths and the set of double doors which were exit doors from the Transit Lounge. At the time of the incident, plaintiff, Helen Rose, was inside the Transit Lounge.

4. All notices, correspondence, communications and orders pertaining to the motions in the Day and Kersen cases shall also be given to counsel for plaintiffs herein.

Dated: New York, New York
January 14, 1975

BROWN, HURWITZ, SEIDMAN, EHRLICK
& ZASKY
Attorneys for Plaintiffs

By S/ Paul Ehrlich
A Member of the Firm

CHADBOURNE, PARKE, WHITESIDE
& WOLFF
Attorneys for Defendant

By Paul O. Murray
A Member of the Firm

SO ORDERED: *Jan. 21, 1975*

CHARLES L BRIEANT, JR.

U.S.D.J.

MEMORANDUM DECISION

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

- - - - - X

ARISTIDES A. DAY, THEODORA DAY and :
CONSTANTINE DAY, individually and
ARISTIDES A. DAY and THEODORA DAY as :
parents of CONSTANTINE DAY,

: Plaintiffs,

-against-

TRANS WORLD AIRLINES, INC.,

: Defendant.

- - - - - X

KATE KERSEN, individually and as :
Administratrix and Administratrix
Ad Prosequendum of the Estate of :
ELBERT KERSEN, deceased,

: Plaintiff,

-against-

TRANS WORLD AIRLINES, INC.,

: Defendant.

- - - - - X

JOHN SPIRIDAKIS, BESSIE SPIRIDAKIS,
LEONARD LAZARUS, SHIRLEY LAZARUS,
ARNOLD ROSE and HELEN ROSE,

: Plaintiffs,

-against-

TRANS WORLD AIRLINES, INC.,

: Defendant.

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73 Civ. 4105-CLB

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74 Civ. 3355-CLB

MEMORANDUM DECISION

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74 Civ. 4191-CLB

Memorandum Decision

Briant, J.

These actions are brought by plaintiffs, international passengers on defendant airline ("TWA") to recover damages for personal injuries sustained during a terrorist attack in the transit lounge at Hellenikon Airport, Athens, Greece on August 5, 1973.

Plaintiffs allege, inter alia, liability without fault under the provisions of the Warsaw Convention, 49 Stat. 3000, et seq. (1934), as modified in accordance with the Montreal Agreement (1966).

Plaintiffs moved pursuant to Rule 56, F.R.Civ.P. for summary judgment on the issue of absolute liability.^{1/} Defendants also moved for summary judgment on that issue of liability, and oppose plaintiffs' motion.

This Court has subject matter jurisdiction pursuant to 28 U.S.C. §1331.

There is no genuine issue with respect to the following facts. The United States and Greece are adherents to the Warsaw Convention, and TWA is signatory to the Montreal Agreement. TWA is a common carrier engaged in transporting passengers between New York, New York and Athens, Greece.

Plaintiffs, or those in whose right they sue, were passengers in international transportation as defined by Warsaw [Article 1(2)] and ticketholders on TWA's Flight 881/5, scheduled to depart Athens at 3:30 P.M. Athens time.^{2/}

Memorandum Decision

On August 5, 1973, at approximately 3:00 P.M. Athens time, passengers for TWA Flight 881/5, bound for New York, were assembled in the transit lounge of Hellenikon Airport in the vicinity of Gate 4 and were lining up for the hand baggage check and physical search conducted by the local Greek police prior to boarding. At 3:10 P.M., after approximately seven passengers had been screened and had passed through Gate 4 to buses which would transport passengers for this flight to the TWA airplane that was parked on the traffic apron, two or more terrorists commenced a violent attack on the passengers and others in the transit lounge. The terrorists threw three grenades in rapid succession which exploded in the vicinity of the lines of passengers which had formed for final processing for boarding the TWA flight. They followed this with several gunshots fired into the crowd at random. The terrorists took up a position behind a bar in the transit lounge and held 32 people as hostages. At approximately 5:20 P.M., after lengthy, tense and strident negotiations with the local officials, the terrorists surrendered and were arrested. The toll of this afternoon of terror: approximately 40 TWA passengers wounded; two TWA passengers died immediately and a third died several days later; a passenger of another airline died immediately; four TWA employees were injured; and an undetermined number of passengers and employees of other airlines were wounded.

Memorandum Decision

Subsequent investigation revealed that the perpetrators were two members of the "Black September" organization, Shafik El Arid, also known as Mohamed Zehod, age 21, a native of Jordan, and Talaat Khantouran, also known as Hussein Talaat, age 21, also a native of Jordan. They were not TWA passengers. Following the all too common scenario for such incidents, in their negotiations following the attack, the terrorists sought an aircraft to take them to a "friendly country" and threatened to kill the hostages absent instant gratification. In later statements to the police and at their arraignment, the terrorists admitted that they planned to attack "Israel immigrant passengers on TWA flights going to Tel Aviv but by mistake struck when [these other] passengers were actually boarding the New York bound flight." They conceded their membership in the Black September terrorist organization and that they were acting pursuant to the instructions of that group.

Regardless of their stated purpose, an obvious goal of this frightful conduct is to seek international publicity at the expense of innocent victims unknown to the organization. The passengers on Flight 881/5 were for the most part United States citizens who had been vacationing in Greece.

The flight ultimately departed carrying only seven passengers who had completed their clearance before the incident, and were available when the local police released the aircraft

Memorandum Decision

at 5:30 P.M. Athens time; this out of 82 passengers, including the plaintiffs, who had checked in for the flight.

Prior to the incident, plaintiffs, individually, had presented their tickets at the TWA checking desk located on the upper level of Hellenikon Airport. There, a TWA agent processed their tickets, issued boarding passes, assigned seats by number and issued baggage checks. Pursuant to TWA's instructions, plaintiffs proceeded through passport and currency control, also on the upper level, and thereafter to the transit lounge on the lower or field level to await the search of their persons and carry-on luggage. Once a passenger is in the lounge he may not leave that area unless he again clears passport and currency control on the upper level.

Before the incident, TWA announced that Flight 881 was ready for departure. Plaintiffs were told by TWA personnel to form a line at Gate 4 for the searches abovementioned. Plaintiffs along with the other passengers were then to proceed through the lounge to a bus, owned and operated by Olympic Airways, which was to take them approximately 100 yards across the traffic apron to their plane.^{3/}

Plaintiff Helen Rose had passed through the search area when the attack occurred. Aristedes and Constantine Day, escorted by a TWA passenger relations agent were told to proceed

Memorandum Decision

with this agent to the plane just before the incident took place. All other plaintiffs at Gate 4 were standing in line to be searched. In the Court's view of the case, these minor differences are not outcome determinative. The issue as to any plaintiff is not where his feet were planted when the killing began, but rather, in what activity was he engaged.

Article 17 of the Warsaw Convention provides that:

"[t]he carrier shall be liable for damages sustained in the event of the death or wounding of a passenger or any other bodily injury suffered by a passenger if the accident which caused the damage so sustained took place on board the aircraft or in the course of any of the operations of embarking or disembarking." (Emphasis added)

TWA's position on this motion is that when the attack occurred plaintiffs were not "in the course of any of the operations of embarking", as that phrase is understood under the Convention, and therefore, as a matter of law, TWA is not liable. That the terrorist activities in the circumstances of this case constituted an "accident" is not disputed. The precise meaning of the terms of a statute or treaty is a question of law. See generally Rosman v. Trans World Airlines, Inc., 34 N.Y.2d 385, 392 (1974) (Warsaw Convention).

The Warsaw Convention, formally known as the Convention for the Unification of Certain Rules Relating to International Transportation by Air. 49 Stat. 3000, T.S. No. 876 (1934), was

Memorandum Decision

adopted in 1929 following several international conferences among the aeronautical powers. The industry was in infancy; Lindberg had flown the Atlantic in 1927 and Earhart in 1928. Substantial perils of all kinds were envisioned. Accordingly, capital was difficult to secure for this infant industry, because of the risks of loss attendant upon unlimited tort liability. To remedy this perceived difficulty, a plan to limit liability imposed on an airline for accidents was adopted, as the Warsaw Convention.

The Warsaw Convention "functions to redistribute the costs involved in air transportation." Husserl v. Swiss Air Transport Company, Ltd., 351 F.Supp. 702, 707 (S.D.N.Y. 1972), aff'd per curiam, 485 F.2d 1240 (2d Cir. 1973). The carrier is in a position to negotiate with the owner or operator of an international air terminal to develop security mechanisms to protect air travellers from terrorist attack. Airport operators have demonstrated their ability and willingness to adapt to technological innovations made necessary by the high incidence of "skyjackings", and in cooperation with the airlines, similar protections might be developed to protect air passengers while they are on the ground. Airlines are also in a better position to be able to bear the losses incurred as a result of airport violence. Carriers might seek insurance coverage that would distribute the cost over a great number of carriers and, con-

Memorandum Decision

sequently, their passengers. See Pan American World Airways, Inc. v. Aetna Casualty & Surety Co., 368 F.Supp. 1098 (S.D.N.Y. 1973), aff'd, 505 F.2d 989 (2d Cir. 1974). The airline industry in the United States is a regulated industry which has relatively uniform tariffs and fares, and, assuredly, such additional costs would be passed along to air passengers. Although the problem of terrorist attack was not anticipated by the drafters of the Convention, it is to be assumed that a treaty designed to deal with the hazards of modern air travel would be sufficiently flexible to encompass this most recent hazard.

The Convention essentially created a presumption of liability on the part of the air carrier for injury or death arising out of international transportation, without proof of fault, subject to certain defenses, and a concomitant limitation of liability to \$8,300.00 per passenger. The United States, although not a signatory to the Convention, commenced adherence in 1934 pursuant to presidential proclamation. I L. Kreindler, Aviation Accident Law, §11 (1971 ed.)^{4/}

The Warsaw Convention does not expressly define the terms used in Article 17. The court must look to the ordinary meaning of the treaty's terms. For the ordinary meaning of the relevant phrase "in the course of any of the operations of embarking" we begin with Funk & Wagnalls' New Standard Dictionary of the English Language (1949). "Course"

Memorandum Decision

...s defined as "the act of moving onward or forward in a certain direction;" "operation", as "a course or series of acts to effect a certain purpose;" and "embarking," as "to go aboard a vessel or a boat."

A consideration of the plain meaning of the words "in the course of any of the operations of embarking" produces a single conclusion. These passengers could not board the aircraft unless they:

1. presented their tickets to TWA at the checking desk on the upper level;
2. obtained boarding passes from TWA;
3. obtained baggage checks from TWA;
4. obtained an assigned seat number from TWA;
5. passed through passport and currency control imposed by the Greek Government;
6. submitted to a search of their persons for explosives and weapons by Greek police;
7. submitted their carry-on baggage for similar inspection by Greek police;
8. walked through Gate 4 to Olympic's bus;
9. boarded the bus;
10. rode in the bus a distance of 100 yards; and
11. walked off the bus and onto the aircraft.

There is simply no other way to "embark," except by these eleven steps. None of these pursuits above-named were being conducted

Memorandum Decision

for the personal convenience of the passengers, nor did any of them constitute fr^ulic and detour. When they were injured they had completed five out of eleven steps, each absolutely essential. Without any one, a passenger could not "embark" upon the aircraft.

Of course, when the Convention was drafted, we lived in a simpler day. Many airlines required nothing more than to weigh the passenger and his luggage, take his ticket and allow him to place his foot on the boarding ladder. The plain meaning of the treaty must be adaptable to the practical exigencies of air travel in these parlous times. Regardless of whcse real estate he was standing on at the time of the terrorist attack, under the circumstances of this case, any person who had accomplished as many as five out of the above mentioned eleven essentia^l acts without which it would be impossible to travel on the flight, within an uninterrupted time sequence, and was perforce lined up to perform the balance of the required acts sequentially, is within the plain meaning of the clause above quoted. TWA would have refused to carry any passenger until he completed substantially all of the above-enumerated acts in the order listed.

Apart from the "plain meaning" test, it is helpful to examine the underlying purpose of the Convention and to interpret its provisions to effectuate that purpose. For this, we may look to the diplomatic and legislative history of a

Memorandum Decision

treaty to determine its correct interpretation. Choctaw Nation v. United States, 318 U.S. 423 (1943); Factor v. Laubenheimer, 290 U.S. 276 (1933); MacDonald v. Air Canada, 439 F.2d 1402 (1st Cir. 1971). Treaties are to be liberally construed so as to carry out the intention and purpose of the parties. See DeTenorio v. McGowan, 364 F.Supp. 1051 (S.D. Miss. 1973).

The original draft of the Convention contained a single provision concerning carrier liability for passengers, goods and baggage. As initially drafted, carrier liability extended from the time the passengers, goods and baggage entered the airport of departure until they departed from the airport of arrival. There was no disagreement concerning these proposals insofar as they related to goods and baggage; however, the delegates declined to impose such extensive carrier liability for passengers. Thus a logical distinction appeared between passengers and property. Article 17 was drafted to reflect a more limited approach to the protection of passengers. Because passengers have volition, and can get themselves into situations of peril which inanimate articles such as goods and baggage cannot do, liability should be limited to those times when a passenger is exposed to the dangers of aviation. Although most accidents occur while passengers are on board the aircraft, it is obvious that a passenger may be exposed to certain risks inherent in aviation before he actually boards the plane, and

Memorandum Decision

after he has left the plane. It was a reasonable structure to provide by Article 17 that carrier liability be extended to accidents which take "place on board the aircraft or in the course of any of the operations of embarking or disembarking." Sullivan, Codification of Air Carrier Liability by International Convention, 7 J. of Air Law 1, 18-22 (1936).

Under modern conditions of international air travel, the period between the moment a passenger enters the airport until he is safely aboard the aircraft often comprises a substantial amount of time and effort, much of which may be said reasonably to constitute embarking. The Convention rejected liability for passenger injury during this entire period. Instead, it established a test, based on a purposeful activity, "embarking". Occasionally, it may be unclear when liability was to attach; no clear line was drawn, as could have, perhaps been done. However, "the great body of law consists in drawing such lines, yet when you realize that you are dealing with a matter of degree you must realize that reasonable men may differ widely as to the place where the line should fall." Schlesinger v. Wisconsin, 270 U.S. 230, 241 (1926) (Holmes, J. dissenting).

This Court should not attempt to draw such a line or formulate an inflexible rule regarding air carrier liability which will apply every time an airport is bombed by criminals.

We restrict ourselves to ^{the} totality of the circumstances affecting

Memorandum Decision

these plaintiffs, viewed against the background of the plain meaning of the Convention, coupled with a consideration of its historical purpose.

We distinguish readily the case of Felismina v. Trans World Airlines, Inc., 13 Av. Cas. 17,145 (S.D.N.Y. June 28, 1974), which involves a claimed disembarking. A passenger who has left the aircraft, unlike plaintiffs, is not herded in lines, and has few activities if any, which the air carrier requires him to perform at all, or in any specific sequence as a condition of completing his journey. The plaintiff in Felismina, supra, was not standing in line in connection with disembarking, and was not performing any acts required by the airline as a condition of travel. She was injured on equipment negligently maintained by third parties.

Although the instant motion is directed at the liability imposed by international treaty, principles of common law tort liability are instructive for purposes of comparison. Stated broadly, "[a] common carrier of passengers is not an insurer of the safety of its passengers though it is bound to use a high degree of care for their safety." Nieves v. Manhattan and Bronx Surface Transit Operating Authority, 31 App.Div.2d 359, 297 N.Y.S.2d 743 (1st Dept. 1969). Under common law principles, the duty of care owed by a common carrier was not limited to the time in which the passenger was actually on board the

Memorandum Decision

carrier, and extended to the time spent by the passenger in the carrier's terminal. Furthermore,:

"[t]he duty of a carrier to keep in a safe condition all portions of its platforms and the approaches leading thereto to which the public is reasonably likely to go is extended to impose a similar duty upon a carrier using the station facilities or approaches of another for its own passengers. So imperative is the duty of a carrier to provide a safe means of access to and exit from its terminal grounds that such duty, it is generally held, cannot be delegated to another. In some instances, however, the carrier's lack of control over the defective premises has been held to preclude liability on its part, the accident resulting in injuries not being one which could have been reasonably foreseen by such carrier." 7 New York Jurisprudence, Carriers §333 at 291-92.

The carrier's duty to a passenger waiting at his station is not limited to providing a safe structure, "but also requires the exercise of reasonable care to prevent danger from vicious practices of third parties, of which the carrier has knowledge or a reasonable opportunity for knowledge if reasonable care is taken." Id. §332 at 291.

The Court concludes as a matter of law that the aforementioned injuries were incurred as a result of an accident during the course of embarking and are actionable under the Warsaw Convention as supplemented by the Montreal Agreement.

Memorandum Decision

Plaintiffs' motion for summary judgment on the issue of liability is granted; defendant's motion for summary judgment dismissing the claim is denied.

This Court recognizes that the issue of liability in these cases is one of first impression. It seems wasteful of the resources of plaintiffs, defendant, and the Court to proceed immediately to a trial of the issues of damages, which undoubtedly could be adjusted by settlement and compromise if the question of liability were resolved with finality. An immediate appeal from the order to be entered may advance materially the ultimate termination of all of the cases above entitled, and three additional cases [Maropis, et al. v. TWA, 73 Civ. 4297-CLB, Koutsovitis, et al. v. TWA, 74 Civ. 612-CLB and Arapogiannis, et al. v. TWA, 74 Civ. 716-CLB] also arising out of the same accident.

If requested by the defendant to do so, the Court will stay all further proceedings in these cases and certify the question for purposes of an interlocutory appeal under 28 U.S.C. §1292.

Counsel for any party, if so advised, may submit a proposed statement of the question to be certified pursuant to Rule 5, F.R.App.P., which may be set forth in the order determining the motion.

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Memorandum Decision

Settle a single order with three (3) copies on five
(5) days notice.

Dated: New York, New York
March 31, 1975

Charles L. Brieant Jr.

CHARLES L. BRIEANT, JR.

U. S. D. J.

Memorandum Decision

F O O T N O T E S

1. There are pendent claims pleaded charging negligence or similar theories, apparently having little factual basis. The airport was not owned or controlled by TWA, but by the Greek Government, which made it available to other airlines equally.
2. Hereinafter, for convenience, we use the term "plaintiffs" to mean "injured passengers" in the context of this case.
3. The bus served all airlines, and its operation and control was not that of TWA.
4. The Hague Protocol proposed and signed in 1955 which amended the Warsaw Convention was never ratified by the United States. The United States determined later that the \$8,300.00 limit imposed by the Convention was insufficient, and on November 15, 1965 the United States filed articles of denunciation of the Convention to become effective within six months. On May 14, 1966, the United States withdrew its notice of denunciation and announced its approval of an interim agreement, known as the "Montreal Agreement." Under this agreement, parties thereto would include in their tariffs to be filed with the Civil Aeronautics Board a special contract by which the carrier would waive those defenses provided by Article 20(1) of Warsaw and increase its limitation of

Memorandum Decision

liability under Warsaw to \$75,000.00. It is important to emphasize that the Montreal Agreement did not in any way change the text of the Warsaw Convention. See generally, Lowenfeld & Mendelsohn, The United States and the Warsaw Convention, 80 Harv. L. Rev. 497 (1967).

ORDER APPEALED FROM

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

-----x
ARISTEDES A. DAY, THEODORA DAY and :
CONSTANTINE DAY, individually and :
ARISTEDES A. DAY and THEODORA DAY : parents of CONSTANTINE DAY,
:

J.S. O.C.
FILED
APR 17, 1975
S.O. N.Y.

Plaintiffs, :

-against- :

TRANS WORLD AIRLINES, INC., :

Defendant. :

-----x
KATE KERSEN, individually and as :
Administratrix and Administratrix :
Ad Prosequendum of the Estate of :
ELBERT KERSEN, deceased, :
:

Plaintiff, :

-against- :

TRANS WORLD AIRLINES, INC., :

Defendant. :

-----x
JOHN SPIRIDAKIS, BESSIE SPIRIDAKIS, :
LEONARD LAZARUS, SHIRLEY LAZARUS, :
ARNOLD ROSE and HELEN ROSE, :
:

Plaintiffs, :

74 Civ. 4191 (CLB)

-against- :

TRANS WORLD AIRLINES, INC., :

ORDER

Defendant. :

-----x

OrderAppealed From

Plaintiffs, having duly moved this court pursuant to Rule 56 of the Federal Rules of Civil Procedure, for partial summary judgment on the issue of liability for a determination that the Warsaw Convention is applicable and that defendant is liable for proven damages not to exceed \$75,000 per passenger, and defendant having moved for partial summary judgment that the Warsaw Convention is not applicable to these cases;

And these motions having come on before the Honorable Charles L. Brieant, Jr., a judge of this court on December 17, 1974 and Nicholas Liakas of Rogers, Hoge & Hills having argued in support of plaintiffs Day, and Alan J. Konigsberg, of Kreindler & Kreindler, having argued in support of plaintiff Kersen, and John N. Romans of Chadbourne, Parke, Whiteside & Wolff having argued in opposition thereto and in support of defendant TWA, and due deliberation having been had thereon;

IT IS ORDERED that the motions of plaintiffs for partial summary judgment on the issue of liability are granted, and the motions of defendant for partial summary judgment on the issue of liability are denied; and it is further

ORDERED that an assessment of damages not to exceed \$75,000 per passenger be had; and it is further

ORDERED that all further proceedings in these

Order Appealed From

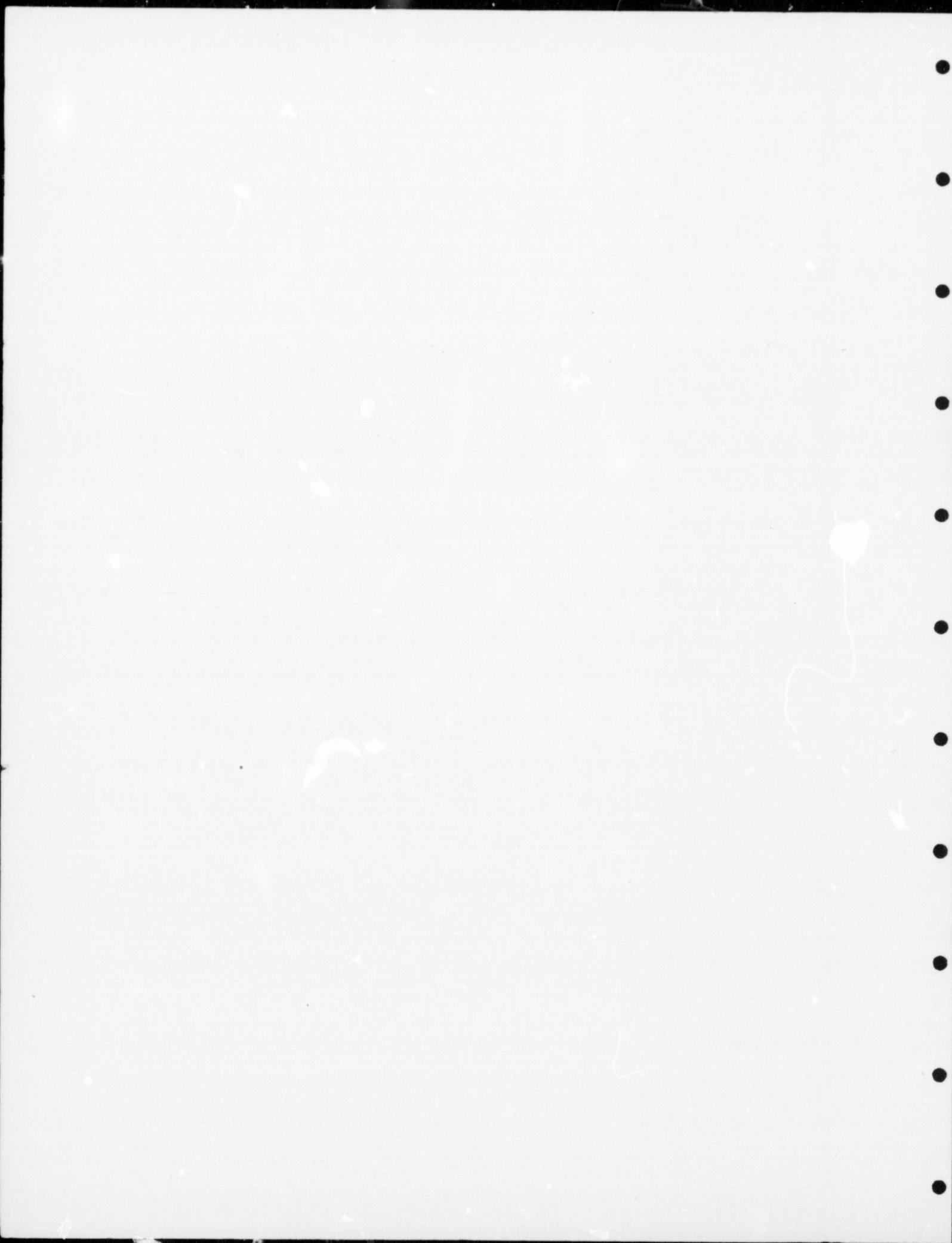
cases be stayed pending a timely filing of a petition for permission to appeal to the United States Circuit Court of Appeals for the Second Circuit and the final determination of all appeals; and it is further

ORDERED, that an interlocutory appeal is hereby certified pursuant to 28 U.S. Code Section 1292 with respect to the following question:

Whether under the facts of this case the substantive rights of the parties are governed by the Warsaw Convention and the Montreal Agreement.

Dated: New York, New York
April 16, 1975

by Charles L. Breast Jr.
U.S.D.J.



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Brown ^{from} Fred Shull
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WILLIAM B. KREIDER